TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1913

No. [illegible] 83

THE AETNA LIFE INSURANCE COMPANY, PETITIONER,

vs.

JOHN T. MOORE, ADMINISTRATOR OF JOHN A. SALGUE, DECEASED.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED MAY 24, 1911.

CERTIORARI AND RETURN FILED NOVEMBER 14, 1911.

(22,695)

(22,695)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 304.

THE AETNA LIFE INSURANCE COMPANY, PETITIONER,

vs.

JOHN T. MOORE, ADMINISTRATOR OF JOHN A. SALGUE, DECEASED.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2035.

THE AETNA LIFE INSURANCE COMPANY, Plaintiff in Error,
versus
JOHN T. MOORE, Administrator, Defendant in Error.

Error to the Circuit Court of the United States for the Southern District of Georgia.

[Original Record Filed November 16, 1909.]
U. S. Circuit Court of Appeals. Filed Mar. 31, 1910. Charles H. Lednum, Clerk.

1 In the Circuit Court of the United States for the Western Division, Southern District of Georgia.

At Law.

JOHN T. MOORE, Admr. on the Estate of John A. Salgue, Plaintiff,
versus
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Complaint on Insurance Policy.

To the Honorable the Judges of the Circuit Court of the United States for the Western Division of the Southern District of Georgia:

The petition of John T. Moore, who sues as administrator on the estate of John A. Salgue, deceased, respectfully represents:

1st.

Petitioner, John T. Moore, is a resident and inhabitant of Macon, Bibb County, Georgia, in said Division and District, and a citizen of the State of Georgia.

2nd.

That the Aetna Insurance Company of Hartford, Connecticut, hereinafter called the defendant, is a corporation organized under and pursuant to the laws of the State of Connecticut, and a citizen of the State of Connecticut, and has its principal place of business in the City of Hartford, in the State of Connecticut.

3rd.

The said Aetna Insurance Company of Hartford, Conn., above named defendant, is a life insurance company, doing business in the State of Georgia, and has an office and transacts business at Macon, in Bibb County, Georgia, and has, at the time of the transactions hereinafter mentioned, had an agency in said county.

4th.

Your petitioner represents that heretofore, to-wit: on the 15th day of July, A. D. 1905, the said Aetna Life Insurance Co., the above named defendant, entered into a certain contract of life insurance, whereby it insured the life of John A. Salgue, who was at that time, and until his death, of Macon, Bibb County, State of Georgia, and a citizen of the State of Georgia, in the sum of six thousand dollars ($6,000.00), all of which will fully appear by reference to the policy of insurance issued by said Aetna Life Insurance Company to said John A. Salgue, dated July 15, 1905, and being No. 65,192, a copy of which is hereunto annexed and by reference made a part hereof.

5th.

By the terms of said policy, the said sum of six thousand dollars ($6,000.00) was to be payable, and at the death of said John A. Salgue became payable, to his executors, administrators, or assigns

6th.

The said John A. Salgue died on the 27th day of May, 1906.

7th.

The said John A. Salgue, from the time of the entering into said contract of insurance with the said Aetna Life Insurance Company up to the time of his death, paid all premiums and fully complied with the terms and conditions of the said policy of insurance, and at his death, the said policy became due and payable to his executors, administrators or assigns, as provided in said policy.

8th.

The said John A. Salgue died intestate, leaving no will and having appointed no executor, and without having assigned said policy of insurance.

3 9th.

Thereafter, to-wit: on the 3rd day of July, 1906, petitioner, John T. Moore, was by the Honorable Court of Ordinary of Bibb County, Ga., duly appointed administrator on the estate of the said Jno. A. Salgue, and qualified as such administrator, and as administrator on the estate of John A. Salgue, became and is vested with all the rights appertaining to the office of administrator on his estate.

10th.

By reason whereof an action has accrued to petitioner, John T. Moore, as administrator upon the estate of said John A. Salgue, deceased, to demand, have and recover of the said Aetna Life Insurance Company the aforesaid sum of six thousand dollars ($6,000.00) as a death claim, as stipulated in said policy of insurance.

11th.

Petitioner has duly submitted proofs of death and has complied with all the terms, conditions and requirements of said policy.

12th.

The said Aetna Life Insurance Company, the above named defendant, has absolutely refused to pay said debt, and still absolutely refuses to pay said debt, or any part thereof, and absolutely denies any and all liability under said contract of insurance.

13th.

Wherefore, petitioner shows that the said Aetna Life Insurance Company, the above named defendant, is indebted to petitioner, John T. Moore, as administrator on the estate of said John A. Salgue, deceased, in said principal sum of six thousand dollars ($6,000.00), together with interest thereon from July 27, 1906, at seven per cent. per annum, and said debt is due and remains unpaid.

14th.

Your petitioner brings suit and prays judgment against said Aetna Life Insurance Company for said sum of six thousand
4 dollars ($6,000.00) principal, together with interest thereon and costs of Court.

Wherefore, petitioner prays that process may issue requiring said Aetna Life Insurance Company of Hartford, Connecticut, to be and appear at the next term of the Honorable Circuit Court of the United States, to be holden in and for the Western Division of the Southern District of Georgia, at Macon, Georgia, to answer your petitioner's complaint.

MINTER WIMBERLY,
JESSE HARRIS,
OLIN J. WIMBERLY,
Attorneys for Petitioner.

* * * * * * *

(Indorsement:) No. 392. In the Circuit Court of the United States for the Western Division, Southern District of Georgia. May 1907, Term. John T. Moore, Admr., etc., vs. Aetna Life Insur. Co. Original Complaint. Filed the 25th day of May, 1907. Cecil Morgan, Deputy Clerk.

* * * * * * *

Plea and Answer of Defendant.

In the District Court of the United States for the Western Division of the Southern District of Georgia.

JOHN T. MOORE, Administrator on the Estate of John A. Salgue, Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN., Defendant.

Complaint on Insurance Policy.

Comes now the defendant, the Aetna Life Insurance Company of Hartford, Conn., defendant in the above stated cause, by its attorneys, Miller, Jones & Miller, and Chas. H. Hall., Jr., and for plea and answer to the petition in this case filed, answers and says:

5

1st.

Defendant admits that John T. Moore is a resident and inhabitant of Macon, Bibb County, Georgia, in said Division and District, and a citizen of the State of Georgia.

2nd.

Defendant admits that the Aetna Life Insurance Company of Hartford, Conn., is a corporation organized under and pursuant to the laws of the State of Connecticut, and a citizen of Connecticut, and has its principal place of business in the City of Hartford, in the *City* (State) of Connecticut.

3rd.

Defendant admits the allegations of the third paragraph.

4th.

Defendant denies that on the 15th day of July, 1905, the Aetna Life Insurance Company entered into a certain contract of life Insurance, whereby it insured the life of John A. Salgue, in the sum of six thousand ($6,000.00) dollars, but admits that John A. Salgue was at the time mentioned, a resident of Bibb County, Georgia, and remained such until his death. Defendant admits that plaintiff at the time of his death was in possession of a certain policy of insurance, substantial copy of which is attached to the declaration, but defendant says that said policy was obtained from this defendant through gross fraud practiced upon it, and on account of said fraud is void and of no binding force or effect, all of which will be fully shown to the Court, and the fraud practiced upon this defendant will be fully hereinafter set out and described.

5th.

Defendant denies the allegations of the fifth paragraph, to the effect that under said policy the said sum of six thousand ($6,000.00) dollars was to be payable at the death of said John A. Salgue, and that it became payable to his executors, administrators or assigns, but on the contrary, says that the policy on which suit is brought is absolutely null and void, for the reasons hereinafter set out.

6

6th.

Defendant admits the allegations of the sixth paragraph.

7th.

Defendant admits that the said John A. Salgue, from the time of procuring said policy with the Aetna Life Insurance Company up to the time of his death, paid certain premiums which would have been all the premiums required from him had the policy been valid; but defendant denies that the said plaintiff fully complied with the terms and conditions of the said policy of insurance, and denies the said policy became due and payable to plaintiff's executors, administrators or assigns, upon the death of the said John A. Salgue, on account of the frauds and misrepresentations hereinafter set forth.

8th.

Defendant admits that the said John A. Salgue, died intestate, leaving no will, having appointed no executor, and without having assigned said policy of insurance.

9th.

Defendant admits the allegations of the ninth paragraph.

10th.

Answering the tenth paragraph, this defendant denies that any action has accrued to petitioner, John T. Moore, as administrator upon the estate of the said John A. Salgue, deceased, to demand, have or require of this defendant the aforesaid sum of six thousand ($6,000.00) dollars, as a death claim, and denies that it is liable in any way upon said alleged policy of insurance, because said policy was procured by the gross fraud of the said John A. Salgue, as hereinafter more fully set forth.

11th.

Answering the eleventh paragraph, defendant admits that petitioner furnished it proofs of death of the said John A. Salgue, but there are no other terms, conditions or requirements of the policy with which petitioner has attempted to comply.

7

12th.

Defendant admits the refusal to pay the claim made by plaintiff against the Aetna Life Insurance Company, and does now deny any and all liability under said policy, because of the gross fraud practiced upon it by the insured in the procurement of said policy, which fraud voided said policy and released this defendant from any and all liability on account of the same; all of which will be more fully hereinafter set out.

13th.

Answering the 13th paragraph, defendant denies that it is indebted to petitioner, John T. Moore, as administrator on the estate of said John A. Salgue, in the sum of six thousand ($6,000.00) dollars, as alleged, and says it is not indebted to the said John T. Moore in any sum on account of said policy, because of the gross fraud practiced upon defendant by the insured in the procurement of said policy.

14th.

For further answer to the petition in this case filed, defendant says that the Aetna Life Insurance Company, together with all other companies doing a similar business, requires every applicant for insurance to make his application and submit to a medical examination and that this was required of the said John A. Salgue.

On the 8th day of July, 1905, the said John A. Salgue applied to this defendant company for a six thousand ($6,000.00) dollar policy of insurance, and filled out and signed an application for said insurance. This application was signed by the said John A. Salgue, and a part of said signed statement made by the said Salgue as a basis for said insurance was the following:

"Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am now in good health, of sound mind and body, and that the following statement- signed by me are full, correct and true; and that I have no knowledge or information of any disease, infirmity or circumstance not stated in this application which may render insurance on my life more hazardous than if such disease, infirmity or circumstance had never existed; and I do hereby agree that the declarations and warranties herein made and the answers to the

8 following questions, together with those signed by me on the second page of this application, shall be the basis and form part of the contract (or policy) between me and said company, and that if the same be in any respect untrue, said policy shall be void; and, I further agree that the insurance hereby applied for shall not be binding upon said company, until a policy has been issued, nor until the amount of premium as stated herein has been received by said company, or its authorized agent, during my life time and good health, and a receipt given therefor, signed by an executive officer of said company; and I further agree that no statement or declaration made to any agent, examiner or any other

person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of, said company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its executive officers, and that no other person can grant insurance or make any agreement binding upon said company."

In this application to the defendant company, the said Salgue warranted his answer to the questions in said application to be complete and true, and warranted and agreed that this policy contract should never take effect until delivered to him while he was in good health. Defendant relied upon this warranty and the breach thereof was such a fraud upon defendants as voids said policy contract, and releases this defendant from any and all liability thereunder. For the purpose of securing the insurance policy sued upon, the said John A. Salgue misrepresented the condition of his health, and made untrue answers to the questions hereinafter fully set out, and thereby committed a fraud upon defendant, for the purpose of securing said insurance policy. The said John A. Salgue knew at the time he made said answers that they were untrue, and defendant believed said answers to be true, and had a right to rely thereon, but by so doing was misled, and such a fraud was perpetrated upon this defendant as to render null and void the insurance policy sued upon.

The 14th question in said insurance application is as follows:

"What are the names and residences of all the physicians whom you have personally employed or consulted during the last five years?"

The answer is: "Dr. James T. Ross, Macon, Ga."

9 As a matter of fact, Dr. Jas. T. Ross was not the only physician whom the said Salgue had consulted during the last five years, as he had also been under the treatment of his family physician, Dr. McAfee, who had treated him through the months of January, March, April, May and July of the year 1905, besides other physicians from whom he received treatment.

The 16th question in said application is as follows:

"Has any proposal or application to insure your life been made to any company, association or agent, on which a policy of insurance is now pending, or has any such proposal or application ever been made for which insurance has not been granted, or on which a policy or certificate of insurance was not issued for the full amount, and of the same kind as applied for? If so, state particulars, and the names of all such companies, associations or agencies."

To this, John A. Salgue answered: "None."

As a matter of fact, on or about June 15th, 1905, the said Salgue applied to the Penn Mutual Life Insurance Company for a contract of insurance, and the application blank was filled out and signed by him. He was examined by the Penn Mutual Life Insurance Company's physician, Dr. W. J. Little, who found out that said Salgue had organic heart disease; that he had a mitral murmur of the heart and hypertrophy of the heart, a faulty compensation of the heart.

On this account, his application to the Penn Mutual Life Insurance Company was rejected, and Dr. Little told him, the said Salgue, of the condition of his heart, and advised him to consult his family physician. Immediately thereafter the said Salgue did consult his family physician, Dr. J. C. McAfee, of Macon, Georgia, who also discovered the heart trouble which Dr. Little had pointed out, and gave medical treatment to him for the same. Immediately thereafter, although advised of the condition of his health, the said John A. Salgue immediately proceeded to apply for as much insurance as he could get, and made the following applications:

On June 28th, 1905, to the Sun Life Insurance Company for $6,000.00;

On June 30th, 1905, to the Provident Savings Life for $5,000.00.

On July 6th, 1905, to the Prudential for $5,000.00;

On July 8th, 1905, to this Company for $6,000.00; and

On July —, 1905, to the Volunteer State for $5,000.00.

So that within about thirty days from the time when he had been advised by Dr. Little of his heart trouble he had made application for approximately Forty Thousand ($40,000.00) Dollars of insurance.

The 19th question in said application for insurance made by the said John A. Salgue to this defendant company is as follows:

"Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? If so, state particulars."

The answer to the question is "No."

Defendant shows that this statement was untrue and that the said Salgue concealed from defendant the fact that Dr. W. J. Little had expressed an unfavorable opinion upon his life with reference to life insurance, and that he was being treated by Dr. McAfee for the very trouble about which he had been notified by Dr. Little, and that all of these facts were well known to the said John A. Salgue, and unknown to this defendant.

The 21st question in the application made by the said John A. Salgue to this defendant company is as follows:

"Have you ever had any of the following diseases? Answer yes or no opposite each."

Then follows the names of a number of diseases with a blank space opposite each for the answer. One of the enumerated diseases is "diseases of the heart," and the answer in the blank space opposite is "No."

The 23rd question in the application of said Salgue to the said defendant Company for insurance is as follows:

"Are you subject to dispepsia, dysentery, or diarrhœa?"

And the answer made by the said John A. Salgue is, "No."

As a matter of fact, for months the said Salgue had been treated by his physician Dr. J. C. McAfee for gastritis, which is one form of dyspepsia; periodically he had to have his stomach washed out by a physician, and in addition to this had been taking electrical treatment.

The 24th question in the application for insurance made by the said Salgue to this defendant company is as follows:

"Have you had, during the last seven years, any disease or sickness? If so, state the particulars in each case, and the name of the attending physician."

And the answer of the said Salgue is "No."

11 As a matter of fact said Salgue had been suffering from chronic stomach trouble and organic heart trouble for a long time, and had been frequently treated by his physician for the same.

The application made by the said John A. Salgue to this defendant company for insurance was according to its terms and express terms of the policy, a part of the insurance contract and formed the basis of the policy of the insurance. Without this application defendant would never have issued the policy sued on, and the said Salgue having warranted that all of the answers to the questions in said application and given by him were true, defendant relied thereon and was misled thereby, for that the said John A. Salgue knew at the time of signing said application that he was not in good health nor of sound body, and that his answers to the questions propounded in the application were not fully correct or true, as more specifically shown above, and the said Salgue with intent to mislead and defraud this company, with-held knowledge and information of his heart trouble and his stomach trouble, and made no reference to them in the application, as the existence of the said diseases rendered insurance on his life more hazardous than if such diseases and infirmities had never existed. And the said John A. Salgue knew at the time of the delivery of the policy to him that he was not in good health and that this defendant company had been misled and deceivved by his answers to the questions in the application signed by him.

Defendant says that the misstatements made by the said John A. Salgue amounted to a breach of the warranty signed and made by him to this company; that his answers to its questions should be full and truthful, and that the same constituted such fraud as to make null and void any policy of insurance issued upon said application, for that all the facts were known to the said John A. Salgue, and were not known to this defendant company, but this defendant acted solely upon representations and the warrants of the said Salgue and was thereby misled and deceived into making the contract. Concealment of his condition was a material matter which affected the risk of the insured and as an illustration of this fact, defendant shows that the said John A. Salgue, within less than a year from the date of his application, died on the train from Flovilla to Macon, from heart failure. The breach of the warranty was such a fraud upon this defendant as voids said policy of insurance, and releases this defendant from any and all liability under said contract.

12 And having fully answered, this defendant prays that it be hence discharged with its reasonable costs in this behalf incurred.

MILLER, JONES & MILLER,
CHAS. A. HALL, JR.,
Attorneys for Defendant.

(Indorsement) No. 393. In the District Court of the United States for the Western Division of Southern District of Georgia. John T. Moore, Admr. on Estate of John A. Salgue vs. Aetna Life Insurance Co. Answer of Defendant. Filed Nov. 30th, 1908. Cecil Morgan, Deputy Clerk. Miller, Jones & Miller and Chas H. Hall, Jr., D'f't's Attys.

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

At Law.

JOHN T. MOORE, Administrator on the Estate of John A. Salgue, Deceased,

vs.

THE PRUDENTIAL — INSURANCE COMPANY OF AMERICA.

Action on Insurance Policy.

At Law.

JOHN T. MOORE, Administrator on the Estate of John A. Salgue, Deceased,

vs.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Action on Insurance Policy.

It appearing to the Court that the above stated causes pending in this Court are of a like nature and relative to the same and similar questions and involve issues similar in their character, and that — will avoid unnecessary costs and delay to try said causes together before the same jury.

It is thereupon — consideration thereof ordered by the Court that said causes be tried together before the same jury, and that the jury render separate verdicts.

In open Court May 13th, 1909.

EMORY SPEER, *Judge.*

13 (Indorsement:) U. S. Circuit Court, Western Division, Southern District of Georgia. No. 391. John T. Moore, Admr. vs. Prudential Insurance Co. of America and Aetna Life Insurance Company of Hartford, Conn. Order that cases be tried together and separate verdicts rendered. Filed May 13, 1909. Cecil Morgan, Deputy Clerk.

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia, May Term, 1909.

JOHN T. MOORE, Administrator, &c.,
vs.
THE PRUDENTIAL LIFE INSURANCE COMPANY and THE AETNA LIFE INSURANCE COMPANY.

Two Complaints Consolidated for Trial Together.

Now comes the Aetna Insurance Company of Hartford, Connecticut, one of the defendants above named, by its counsel of record and moves the Court not to submit said consolidated cases to the jury, but to direct a verdict in its favor upon the ground that the evidence introduced upon the trial of said consolidated cases, with all the inferences that the jury can justifiably draw from it, is insufficient to support a verdict for the plaintiff, and in fact demands that a verdict should be directed in favor of this defendant.

MILLER & JONES,
C. H. HALL,
Attorneys for Aetna Co.

(Indorsement:) No. 391. United States Circuit Court, Western Division, Southern District of Georgia. John T. Moore, Adm'r, etc., vs. Prudential Insur. Co. of America, and the Aetna Life Insur. Co. of Hartford, Conn. Motion for direction of verdict in favor of Defendant. Filed May 19, 1909. Cecil Morgan, Deputy Clerk.

14

Verdict.

In the action of the plaintiff against the Aetna — Insurance Company we the jury find for the plaintiff the sum of six thousand dollars with interest at 7 per cent from July 27th, 1906, with cost of suit. May 21, 1909.

T. C. BURKE, *Foreman.*

Filed May 22, 1909.

CECIL MORGAN,
Deputy Clerk.

In the Circuit Court of the United States for the Southern District of Georgia.

No. —. At Law.

JOHN T. MOORE, Administrator on the Estate of John A. Salgue,
vs.
THE AETNA LIFE INSURANCE COMPANY.

It being represented to the Court that it is the intention of the defendant to prosecute a writ of error from this Court to the Circuit

Court of Appeals of the Fifth Judicial Circuit, and it further appearing that it will be difficult for this defendant to prepare and present its bill of exceptions in this cause prior to September first, 1909; It is therefore ordered that this defendant, the Aetna Life Insurance Company have until that date to present and have allowed, settled and certified its bill or bills of exception in this cause, and that execution be stayed until that time. This order is made at the term at which said cause was tried and judgment upon said verdict entered.

This July 9th, 1909.

EMORY SPEER, *Judge.*

(Indorsement:) No. 392. Circuit Court of the United States for the Southern District of Georgia. John T. Moore, Adm'r Jno. A. Salgue, vs. Aetna Life Ins. Co. Order extending time for presentation of Bill of Exceptions of Aetna Ins. Co. Filed July 12, 1909. Cecil Morgan, Deputy Clerk. Miller & Jones, C. H. Harris, Jr., Attorneys.

15 In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

JOHN T. MOORE, Administrator,
vs.
AETNA LIFE INSURANCE COMPANY

Action on Insurance Policy.

Upon motion of Minter Wimberly, Olin J. Wimberly and Jesse Harris, attorneys of record for the plaintiff in the above stated cause, it is ordered that judgment be entered upon the verdict heretofore, to-wit: on May 22, 1909, rendered in favor of plaintiff and against defendant, Aetna Life Insurance Company in the sum of Six Thousand Dollars ($6,000.00) principal and Seven Hundred and Sixty Dollars and forty cents ($760.40.) interests and costs.

It is, therefore, considered and adjudged that plaintiff, John T. Moore, administrator, do have and recover of and from the defendant, Aetna Life Insurance Company the sum of Six Thousand Dollars ($6,000.00) principal and Seven Hundred and Sixty Dollars and forty cents ($760.40) interest, together with costs, and all future interest at seven per cent, that may hereinafter accrue, the same being the amount found by the jury to be due and owing by the defendant.

Dated this 1st day of June, 1909.

EMORY SPEER, *Judge.*

MINTER WIMBERLY,
OLIN J. WIMBERLY,
JESSE HARRIS,
Attorneys for Plaintiff.

(Indorsement:) In the Circuit Court of the United States for the Western Division of Georgia. John T. Moore, Adm'r, vs. Aetna Life Insurance Co. Judgment. Filed June 1, 1909. Cecil Morgan, Deputy Clerk. Minter Wimberly, Olin J. Wimberly, Jesse Harris, Attorneys for Plaintiff.

16 In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

JOHN T. MOORE, Adm'r of John A. Salgue,
vs.
THE AETNA LIFE INSURANCE COMPANY.

Action at Law and Verdict for Plaintiff.

It being represented to the Court that it is the intention of the above named defendant to prosecute a writ of error in said case to the Circuit Court of Appeals of the Fifth Circuit, and it being made further to appear that owing to other pressing and important work the stenographers reporting said case under the direction of the Court have made it impossible to prepare for the defendant's counsel a transcript of the record, and a copy of the charge of the presiding Judge, and that it will therefore be impossible for the defendant to prepare and present to the Court its writ of error before October 1st, 1909:

It is ordered that said defendant, the Aetna Life Insurance Company do have until said October 1st, 1909, to prepare and present its bill of exceptions and assignments of error and to have the same allowed, settled and certified as provided by law.

Let execution in this case be stayed until October 1st, 1909.

This order is made at the term said case was tried, and judgment upon said verdict entered and is supplementary to the order previously granted herein extending the time of the defendants to September 1st, 1909.

This order signed this 28th day of August, 1909.

EMORY SPEER,
U. S. Judge.

(Indorsement:) No. 392. Order extending time to October 1, 1909, to file bill of exceptions. Jno. J. Moore, Adm'r of J. A. Salgue, vs. The Aetna Life Insurance Company. Filed August 30th, 1909. Cecil Morgan, Deputy Clerk. Miller & Jones, Macon, Ga.

17 *Petition for Writ of Error.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

Action on Insurance Policy.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Action on Insurance Policy.

Consolidated for Trial.

And now comes the Aetna Life Insurance Company of Hartford, Conn., defendant herein, and says that on or about the 1st day of June, 1909, this Court entered judgment herein in favor of the plaintiff and against this defendant, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which errors will appear more in detail from the assignment of errors which is filed with this petition.

Wherefore this defendant prays that a writ of error may issue in this behalf out of the Circuit Court of Appeals for the Fifth Circuit for the correction of the errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the said Circuit Court of Appeals.

MILLER & JONES,
CHAS. H. HALL,
Attorneys for Defendant.

A. L. MILLER,
M. D. JONES,
CHAS. H. HALL,
Of Counsel.

Filed in office this 1st day of October, 1909.

CECIL MORGAN,
Deputy Clerk.

18 *Order Allowing Writ of Error.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

Action on Insurance Policy.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Action on Insurance Policy.

Consolidated for Trial.

This day, the 28th day of September, 1909, comes the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its attorneys and filed herein and presents to the Court its petition praying for the allowance of a writ of error and assignment of errors intended to be urged by it, praying also that a transcript of the record and papers and proceedings upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Judicial Circuit and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the Court does allow a writ of error upon the defendant giving bond according to law in the sum of Twelve Thousand ($12,000.00) Dollars, which shall operate as a supersedeas bond.

This 28th day of September, 1909.

EMORY SPEER,
U. S. Judge.

Ent. J. 6. 8. United States Circuit Court. Filed in Clerk's office 1st day of October, 1909.

CECIL MORGAN,
Deputy Clerk.

(Indorsement:) No. 17. U. S. Circuit Court, Western Division Southern District of Georgia. John T. Moore, Adm'r vs. Aetna Life Insurance Co., of Hartford, Conn. Petition for Writ of Error. Order allowing Writ of Error. Filed October 1, 1909. Cecil Morgan, Deputy Clerk.

19 *Assignment of Error.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

Action on Insurance Policy.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Action on Insurance Policy.

Consolidated for Trial.

The defendant, The Aetna Life Insurance Company of Hartford, Conn., in the above stated action, in connection with its petition for writ of error, makes the following assignment of error upon which it would rely, which it alleges occurred in the trial of said case, to-wit:

1.

That the Circuit Court of the United States for the Western Division of the Southern District of Georgia, erred in passing its order on the 13th day of May, 1909, consolidating for trial the two cases of John T. Moore, Administrator, vs. The Aetna Life Insurance Company, and John T. Moore, Administrator, vs. The Prudential Insurance Company of America, which order — as follows:

20 In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

At Law.

JOHN T. MOORE, Administrator on the Estate of John A. Salgue, Deceased,
vs.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

Action on Insurance Policy.

At Law.

JOHN T. MOORE, Administrator on the Estate of John A. Salgue, Deceased,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Action on Insurance Policy.

It appearing to the Court that the above stated causes pending in this Court are of a like nature and relative to same and similar ques-

tions and involve issues similar in their character, and that — will avoid unnecessary costs and delay to try said causes together before the same jury,

It is thereupon — consideration thereof ordered by the Court that said causes be tried together before the same jury, and that the jury render separate verdicts.

In open Court, May 13th, 1909.

EMORY SPEER, *Judge*.

This defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in passing such order because that:

First. The two causes of action were against different parties—one was between John T. Moore, Administrator, and the Prudential Insurance Company of America, and the other between John T. Moore, Administrator, and the Aetna Life Insurance Company of Hartford, Conn.

Second. Because the two causes of action were based upon separate contracts, bearing different dates, between different parties, and having entirely different conditions and stipulations, and being for different amounts.

21 Third. Because the respective defenses of the two companies to the two causes of action were entirely different and were based upon the breach of different conditions and stipulations in the two separate contracts of insurance on the part of the said John A. Salgue, deceased,—all as shown by the respective answers filed by the two companies in the two cases.

This defendant alleges that the Court committed error in consolidating said cases for trial and in passing the said order of consolidation for each and all of the reasons stated.

To this order of the Court the defendant, the Aetna Life Insurance Company of Hartford, Conn., duly excepted while the jury was still at the bar of the Court, which exception was duly noted and allowed.

2.

That the Circuit Court of the United States, for the Western Division of the Southern District of Georgia erred in overruling and denying the motion made by counsel for this defendant, The Aetna Life Insurance Company of Hartford, Conn., plaintiff in error, at the close of the evidence and before the charge to the jury, to direct the jury to return a verdict for this defendant,—this motion being as follows:

"And now comes the Aetna Life Insurance Company of Hartford, Conn., by its counsel of record, and moves the Court not to submit said case to the jury, but to direct a verdict in its favor, upon the ground that the evidence introduced upon the trial of said case with all the inferences that the jury can justifiably draw

from it is insufficient to support a verdict from the plaintiff and demands that a verdict should be directed in its favor.

(Signed) A. L. MILLER,
CHAS. H. HALL, JR.,
Attorneys for the Defendant, the Aetna Life Insurance Company of Hartford, Conn.

This defendant alleges that the Court committed error in overruling and denying the said motion because each and all the grounds upon which the same was presented furnished good and sufficient cause for giving the instructions asked.

To the refusal of the Court to give such instructions the defendant duly excepted while the defendant was still at the bar of the Court, which exception was duly noted and allowed.

3.

22 That the said Court erred in refusing to give to the jury the following instructions, which the Court was in writing requested by the defendant to give—said request being made while the jury was still at the bar of the Court, and before the charge of the Court to the jury.

And, to such refusal, defendant then and there excepted, which exceptions — duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instruction.

Said requested instructions are as follows:

"I would charge you that in this State,

"Where an applicant for life insurance covenants in his application that the statements made to the medical examiner are true, and these statements are made a part of the contract of insurance, and from the basis of such contract, any variation in any of them which is material, whereby the nature or extent of character of the risk is changed, will avoid the policy, whether the statement was made in good faith or wilfully or fraudulently."

Defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instruction to the jury because:

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for, or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

4.

That the said Court erred in refusing to give to the jury the following instructions, which the Court was in writing requested by the defendant to give,—said request being made while the jury was still at the bar of the Court, and before the charge of the Court to the jury.

23 And to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"I charge you further that,

"Wherever an applicant for life insurance makes material representations in his application or examination, and covenants that they are true,—and the representations are made the basis of the contract of insurance, such contract is void of the representations vary from the truth in such a manner as to change the nature, extent or character of the risk. This is true although the applicant may have made the representations in good faith, not knowing that they were untrue."

Defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury because:

First. Because the instructions were legal and pertinent, and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for, or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

5.

That the said Court erred in refusing to give to the jury the following instructions, which the Court was in writing requested by the defendant to give,—said request being made while the jury was still at the bar of the Court, and before the charge of the Court to the jury.

And to such refusal, defendant then and there excepted, which exception was then and there duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"The application of Salgue, the insured, to the Aetna Life
24 Insurance Company, contained the following statement, made on July 8th, 1905,—his policy being issued July 15th, '05.

"Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am now in good health, of sound mind and body, and that the following statements signed by me are full, correct and true; and that I have no knowledge or information of any disease, infirmaty or circumstance, not stated in this application, which may render insurance on my life more hazardous than if such disease, infirmity or circumstance had ever existed; and I do hereby agree that the declarations and warranties herein made, and the answers to the following questions, together with those signed by me on the second page of this application, shall be the basis and form part of the contract (or policy)

between me and said company, and that if the same be in any respect untrue, said Policy shall be void."

Now, I charge you that if Salgue, by a written answer in his said application to a question as to whether he had heart disease answered "No," such answer being warranted and covenanted to be true in his application, he is bound by his covenant without regard to his good faith in making the representations, and if such statement made as to his not having heart disease was untrue, then the policy issued to him by the Aetna Life Insurance Company would be void."

Defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because:

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for, or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

6.

That the said Court erred in refusing to give to the jury the following instructions, which the Court was in writing requested by the defendant to give,—said request being made while the jury was still at the bar of the Court, and before the charge of the Court to the jury.

And to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"The insured, Salgue, in answer to a question asking for the names and residences of all of the physicians whom he had personally employed or consulted during the five years next preceding July 8th, 1905, answered, "Dr. Jas. T. Ross, Macon, Ga." Now, if you believe from the evidence that the insured had, as a matter of fact either personally employed or consulted Dr. W. J. Little, Dr. J. C. McAfee and Dr. W. R. Winchester, in addition to Dr. Ross, and within a few days prior to July 8th, 1905, I charge you that this would be a material misrepresentation, because such answer withheld from the Aetna Insurance Company very important sources of information, which it was entitled to have in response to said question."

Defendant, the Aetna Life Insurance Company, of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because:

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

That the said Court erred in refusing to give to the jury the following instructions, which the Court was in writing requested by the defendant to give—said request being made while the jury was still at the bar of the Court, and before the charge of the Court to the jury.

And, to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said ex-
26 ception being upon the grounds herein stated as the grounds *herein stated as the grounds* of error for refusal to give such instructions.

Said requested instructions are as follows:

"The insured was also asked this question by the Aetna's agent: "Has any proposal or application to insure your life been made to any Company, association or agent on which a policy of insurance is now pending? Or has any such proposal or application ever been made for which insurance has not been granted or on which a policy or certificate of insurance was not issued for the full amount and of the same kind as applied for? If so, state particulars, and the names of all such companies, associations or agents?"

"To this question he answered, "None."

"Now, I charge you that if you believe from the evidence there were pending at that time applications for insurance in other companies, associations or agents or that an application had been previously made by the insured to the Penn Mutual Company, upon which insurance had not been granted, then this reply upon the part of the insured would be a material misrepresentation of fact, whether such answer was made in good faith or not, and under the terms of the application signed by the insured, such answer would render said policy void."

Defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because,

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instruction asked for, or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

That the said Court erred in refusing to give to the jury the following instructions which the Court was in writing requested by the defendant to give—said request being made while the jury was still at the bar of the Court, and before the charge of the Court to the jury.

27 And, to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"The insured, Salgue, was asked the following question:

"Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? If so, state particulars."

"To this question he answered, "No."

"Now, if you believe from the evidence that within a few weeks prior to July 8th, 1905, the date of his application to the Aetna Company, Salgue, the insured was examined by Dr. Wm. J. Little, as the medical examiner for the Penn Mutual Insurance Company, who told Salgue in substance that his heart was in such condition that he could not recommend him for life insurance advising him to see his own doctor about his heart, and that on the same day Dr. J. C. McAfee, to whom Salgue had been referred by Dr. Little, examined Salgue and expressed a like unfavorable opinion as to the condition of Salgue's heart, and made such opinion known to Salgue, then I charge you that under the terms of the said application and Salgue's warranty therein, said policy would be void, and Salgue's administrator would not be entitled to recover against the Aetna Insurance Company, because if such are the facts, Salgue's answer would be untrue, and be a material misrepresentation and void the policy."

Defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because,

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for, or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

That the said Court erred in refusing to give to the jury the following instructions which the Court was in writing requested
28 by the defendant to give—said request being made while the jury was still at the bar of the Court, and before the charge of the Court to the jury.

And, to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"I charge you also that the instructions I have just given you as to the effect upon the insurance policy issued to Salgue by the Aetna Company or the misrepresentations as to his death are to control you, notwithstanding the evidence may show that Salgue came to his death from a thoracic aneurism as claimed by the plaintiff."

Defendant, the Aetna Life Insurance — of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because,

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for, or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

That the said Court erred in refusing to give to the jury the following instructions, which the Court was in writing requested by the defendant to give—said request being made while the jury was still at the bar of the Court and before the charges of the Court to the jury.

And, to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"I charge you that the application of John A. Salgue to the Aetna Life Insurance Company contained the following statement: "I further agree that no statement or declaration made to any agent, examiner or any other person, and not contained in this ap-
29 plication, shall be taken or considered as having been made to, or brought to the notice or knowledge of said company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its executive officers, and that no other person can grant insurance or make any agreement binding upon said company." This agreement is incorporated in and made a part of the policy of the Aetna Life Insurance Company sued upon. In addition to this agreement between the assured and the Insurance Company the following words appear upon the policy issued by the company to the assured: "If any error is found in the statements and answers of the applicant, note the same and return the policy to the home office of the company for correction." By the agreement here quoted, from both the application and the policy issued to the assured, the power of the agent receiving the application and the power of the medical examiner of the Insurance Company was expressly limited and notice of such limitation was brought home to the assured by the agreement incorporated in the application which he signed, and by this same agreement being embodied and being made a part of the policy issued to him by the Aetna Life Insurance Company. The power of the agent taking the application and the power of the medical examiner of the company being limited by this agreement, no verbal statement or declaration made to any agent of the company or any examiner of the company, or any other person connected with the company, and not contained in his written application to the company, should be taken or considered as having been made to or brought to the notice or knowledge of the Aetna Life Insurance Company or as charging the said company with any liability by reason thereof."

Defendant, The Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because,

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for or similar instructions to the same
30 effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

That the said Court erred in refusing to give to the jury the following instructions which the Court was in writing requested by the defendant to give—said request being made while the jury was still at the bar of the Court, and before the charge of the Court to the jury.

And, to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"I charge you that it is competent for any party, corporation or individual, employing an agent in the negotiation of a contract, whether of insurance or otherwise, to limit his powers, provided the limitation is brought home to the knowledge of the other contracting party, otherwise the principal will be bound by the apparent as well as the actual powers of the agent; and as, in this case, the limitation was made a part of the contract between the parties it is binding upon them."

Defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because,

First. The instructions requested *was* legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

That the said Court erred in refusing to give to the jury the following instructions which the Court was in writing requested by the defendant to give—said request being made while the jury was still at the bar of the Court and before the charge of the Court to the jury.

And, to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said ex-
31 ception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"I charge you further that the stipulation between the parties limiting the powers of the soliciting agent and the powers of the medical examiner, and providing that the contract should be based upon the written application was binding upon the parties, and it was, therefore, immaterial what may have been said by or to the

agents at the time of making the application or what may have been said by or to the medical examiner at the time he examined the applicant which was not reduced to writing and presented to the officers of the company at the home office in Hartford, Connecticut.

Defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because,

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for or similar instructions to the same effect.

The evidence upon the question covered by said *question* is fully set forth in the bill of exceptions.

That the said Court erred in refusing to give to the jury the following instructions which the Court was in writing requested by the defendant to give—said request being made while the jury was still at the bar of the Court and before the charge of the Court to the jury.

And, to such refusal, defendant then and there excepted, which exception was duly noted and allowed by the Court, said exception being upon the grounds herein stated as the grounds of error for refusal to give such instructions.

Said requested instructions are as follows:

"I charge you further that whether the statements and answers contained in the application of the assured were the same statements made by him to the agents of the company securing his application and to the medical examiner of the company or not, yet when he afterwards received the policy with a copy of the application attached and a memorandum endorsed thereon, calling his at-

32 tention to the copy thus attached, with a request that any errors in the application be reported to the company for correction, it was his duty to report any answers incorrectly written down and thus enable the company to correct them; and that by his failure to do so he must be presumed to have accepted the policy upon the faith of the answers therein contained, and to have acquiesced and agreed that it should remain as the basis of the contract of insurance."

Defendant, the Aetna Life Insurance Company of Hartford, Conn., alleges that the Court committed error in refusing to give said instructions to the jury, because,

First. The instruction requested was legal and pertinent and gave the law relative to this issue between the plaintiff and this defendant.

Second. Because the Court failed to incorporate in his charge the instructions asked for or similar instructions to the same effect.

The evidence upon the question covered by said request is fully set forth in the bill of exceptions.

Wherefore, the defendant, the Aetna Life Insurance Company of Hartford, Conn., prays that the judgment of the Circuit Court of the United States for the Southern District of Georgia, be re-

versed and that said Circuit Court be directed to grant a new trial of said case.

MILLER & JONES,
CHAS. H. HALL,
Attorneys for the Defendant, the Aetna Life Insurance Company of Hartford, Conn.
A. L. MILLER,
M. D. JONES,
CHAS. H. HALL,
Of Counsel.

Filed in office the first day of October, 1909.

CECIL MORGAN,
Deputy Clerk.

Indorsement: U. S. Circuit, Western Division, Southern District of Georgia. John T. Moore, Admr., vs. Aetna Life Insurance Co. of Hartford, Conn. Assignment of Errors. Filed October 1, 1909. Cecil Morgan, Deputy Clerk.

Know all men by these presents, that we, the Aetna Life Insurance Company of Hartford, Conn., as principal and American Bonding Company of Baltimore, as sureties, are held
33 and firmly bound unto John T. Moore, administrator of John A. Salgue, in the full and just sum of twelve thousand dollars, to be paid to the said John T. Moore, administrator, his certain attorney or successor, to which payment well and truly to be made we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals and dated this 27th day of September, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a term of the Circuit Court of the United States for the Western Division of the Southern District of Georgia in a suit depending in said Court between John T. Moore, administrator of John A. Salgue, plaintiff, and the Aetna Life Insurance Company of Hartford, Conn., defendant, a judgment was rendered against the said the Aetna Life Insurance Company of Hartford, Conn. and the said Aetna Life Insurance Company of Hartford, Conn., having obtained writ of error and filed a copy thereof in the clerk's office of the said Court to reverse the judgment in the aforesaid suit and the citation directed to the said John T. Moore, administrator of John A. Salgue, citing and admonishing him to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit to be holden at Atlanta, Georgia, within thirty (30) days from the date thereof.

Now, the condition of the above obligation is such that if the said Aetna Life Insurance Company of Hartford, Conn., shall prosecute said writ to effect and pay the amount of the said judgment and interest, including just damages for delay and all costs if it fail

to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] THE AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN.,
By A. L. MILLER.

[SEAL.] THE AMERICAN BONDING COMPANY OF BALTIMORE,
By MORRIS HARRIS,
Attorney in Fact.

Signed, sealed and delivered in the presence of:

[SEAL.] SIDNEY W. HATCHER,
Notary Public, Bibb Co., Ga.

Approved:

EMORY SPEER, *Judge.*

34 Indorsement: U. S. Circuit Court, Western Division, Southern District of Georgia. John T. Moore, Admr., vs. Aetna Life Insurance Co. of Hartford, Conn. Bond on Appeal. Filed Cecil Morgan, Deputy Clerk. October 1, 1909.

* * * * * * *

Bill of Exceptions.

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

Action on Insurance Policy.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN.

Action on Insurance Policy.

Consolidated for Trial.

Be it remembered, that on the 13th day of May, 1909, the above entitled causes came on to be heard before the above Court, and a jury duly empaneled, Hon. Emory Speer, Judge, presiding; the plaintiff appearing by Messrs. Minter Wimberly, Olin Wimberly and Jessie Harris, counsel, and the defendant, The Aetna Life Insurance Company of Hartford, Conn., appearing by its counsel, Messrs. A. L. Miller and Charles H. Hall, Jr., and the following proceedings were had:

Upon the call of the two above named causes, both sides having announced ready, upon motion of plaintiff's counsel the two causes

were consolidated for trial by order of the Court, under Section 929 of the Revised Statutes. For the purposes of this consolidation the following order was passed by the Court:

35 *Order.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

At Law.

JOHN T. MOORE, Administrator on the Estate of John A. Salgue, Deceased,
vs.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

Action on Insurance Policy.

At Law.

JOHN T. MOORE, Administrator on the Estate of John A. Salgue, Deceased,
vs.
ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Action on Insurance Policy.

It appearing to the Court that the above stated causes pending in this Court are of a like nature and relative to the same and similar questions and involve issues similar in their character, and that it will avoid unnecessary costs and delay to try said causes together before the same jury.

It is thereupon on consideration thereof ordered by the Court that said causes be tried together before the same jury, and that the jury render separate verdicts.

In open Court May 13th, 1909.

EMORY SPEER, *Judge.*

To the ruling of the Court in passing this order, and in consolidating the two causes for trial, the defendant, The Aetna Life Insurance Company of Hartford, Conn., then and there duly excepted, which exception was duly noted and allowed by the court. The exception so presented and allowed being based upon the contention of this defendant that the causes of action were dissimilar—the defendants different companies—the actions based upon different contracts of insurance, and the defence of the two defendants being dissimilar—and the issues involved in the two cases being dissimilar—and the defendant hereby tenders this its bill of exceptions to the Court to sign and seal, and the Court does hereby sign and seal the same.

36 Thereupon the following evidence was introduced by and upon behalf of the plaintiff in the case:

The policy issued by the Prudential Insurance Company of America upon the life of John Andrew Salgue, dated July 10th, 1905, for the sum of five thousand — $5,000.00, which policy was as follows:

The Prudential Insurance Company of America.

Incorporated as a Stock Company by the State of New Jersey.

Age 42.

Whole Life Policy.

Five Year Dividend.

In consideration of the application of this policy which is hereby made part of this contract, and of the payment in the manner specified of the premium herein stated, The Prudential Insurance Company of America, hereby insures the life of the person herein designated as the insured, for the amount named herein, payable as specified subject to the privileges and provisions of the second and third pages hereof, which are hereby made part of this contract.

The insured, John Andrew Salgue; amount of insurance, five thousand dollars; when payable, immediately upon acceptance of satisfactory proof of the death of the insured, during the continuance of this policy.

Where Payable: At the home office of the company in Newark, New Jersey.

Payable To: The executors, administrators or assigns of the insured.

Premium: One hundred seventy-five and 20/100 dollars.

How Payable. Annually, in exchange for the company's receipt.

When Payable: On the delivery of this policy and on or before the tenth day of July, in every year, during the continuance of this policy.

Where Payable: At the home office of the company or as provided under the heading "Provisions," on the third page hereof.

In witness whereof, the said The Prudential Insurance Company of America, at its office in the City of Newark, New Jersey, has caused this policy to be signed by its president and vice-
37 president, and to be duly attested, this tenth day of July, one thousand nine hundred and five.

JOHN F. DRYDEN, *President.*
LESLIE D. WARD, *Vice-President.*

Attest:
E. W. PIERSON.

Privileges.

Cash Loan: If this policy be continued in force, the insured may borrow from the company the amount specified in the following table, by making written application for the loan and assigning the policy to the company, as security in accordance with the terms

of the company's loan certificate, provided five per cent. interest on the whole amount of the loan be paid annually in advance.

Paid Up Life Policy or Paid Up Insurance: If this policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium on the date when due, as specified on the first page hereof, or of any note given for a premium or loan made in cash on such policy as security, or of any interest on such note or loan, it may be surrendered for a non-participating paid up life policy as specified in the following table; provided the policy legally surrendered to the company within three months after the date to which premiums have been duly paid. If this policy, having lapsed or become forfeited as above, be not surrendered for a paid up life policy, the company will write in lieu of this policy, and without any action on the part of the insured, a non-participating, paid up term policy for the full amount insured by this policy, such paid up term policy to be dated on the date to which premiums have been duly paid, and to continue in force for the term to be indicated by the following table; provided, that if there be any indebtedness to the company on account of this policy, the amount of such paid up term policy shall be the face amount of this policy, less the amount of such indebtedness, and the term for which said paid up term policy shall run, shall be changed to that term for which the surrender value of this policy hereinafter specified after deducting such indebtedness, will carry the modified amount at the single premium term rate of the company. The paid up term policy shall provide, moreover, that in case of the death of the insured, within one year from its date, there shall be de-
38 ducted from the amount payable by the company any premium that would have become due on this policy up to the time of death of the insured, if the policy had been continued in force. The paid up term policy will be delivered on the legal surrender of this policy.

Or Cash Surrender Value: If this policy be legally surrendered to the company within three months from the end of the third year from its date, or of any year thereafter, and all premiums to the end of that year have been paid in full, the company will pay therefor the sum indicated by the following table, and to this sum will add full reserve value of any additions existing at the end of that year.

Table Above Referred To.

Age 42.

The cash loans, paid up life policies and cash surrender values stated in the following table, apply to a policy of $1,000.00. As this policy is for $1,000.00, the cash loan (column 1) the paid up life policy, (column 2) or the cash surrender value, (column 4) available in any year, will be five times the amount stated in the table below for that year.

At the end of		Cash loan per $1000.	Paid up life policy per $1000.	Extended insurance for face amount of policy.		Cash surrender value per $1000.
		1	2	*3		4
1	year	None	None	60	days	None
2	years	None	None	120	days	None
3	"	$ 32.00	$ 84.00	254	"	$ 35.00
4	"	47.00	118.00	346	"	50.00
5	"	68.00	156.00	52	"	73.00
6	"	85.00	187.00	49	"	91.00
7	"	104.00	219.00	4	"	110.00
8	"	124.00	251.00	280	"	131.00
9	"	145.00	283.00	154	"	153.00
10	"	167.00	315.00	357	"	177.00
11	"	188.00	346.00	161	"	198.00
12	"	209.00	378.00	301	"	220.00
13	"	230.00	409.00	50	"	243.00
14	"	253.00	440.00	141	"	266.00
15	"	275.00	471.00	210	"	290.00
16	"	297.00	496.00	218	"	313.00
17	"	319.00	521.00	209	"	336.00
18	"	341.00	544.00	185	"	359.00
19	"	364.00	568.00	148	"	383.00
20	"	386.00	589.00	100	"	407.00
3	years					
4	"					
6	"					
7	"					
8	"					
8	"					
9	"					
9	"					
10	"					
10	"					
11	"					
11	"					
11	"					
11	"					
11	"					
11	"					
11	"					
11	"					

(*See 2nd par. of special privileges below.)

The benefits stated in the above table apply to the original
40 sum insured only. If the sum be increased by dividends, or otherwise, the benefits will be increased, but if any indebtedness to the company placed on the policy will operate to reduce the benefits.

If this policy be continued in force beyond the 20th year, tables of cash loans, paid up life policies, extended insurance and cash surrender values as above, after the twentieth year, will be furnished on application to the Home Office.

If the premiums on this policy be paid in quarterly or semi-annual installments, due allowance will be made in computing benefits from the above table for that portion of a year's premium paid over and above the full number of year's premiums indicated.

Special Privileges.

Grace in Payment of Premiums: In the payment of any premium under this policy, except the first, a grace of one month will be allowed, during which time the policy will remain in force.

Policy non-forfeitable, after first year's premium has been paid: If this policy, after having been in force one year, shall lapse for non-payment of premiums, the company will continue in force the insurance under the policy for a period of sixty days from the due date of such premium, as specified on the first page hereof; if this policy, after being in force two full years, shall lapse for non-payment of premium, the company will continue in force the insurance under the policy for one hundred and twenty days from the due date of such premium; after the policy has been in force for three or more years, the above privilege, "Paid up life policy, or extended insurance," will apply.

Revival of Policy.

If this policy be lapsed for non-payment of premium, it will be revived at any time within two years after due date of such premium, as specified on the first page hereof, upon written application, and payment of arrears of premiums, with interest at the rate of five per cent. per annum, provided evidence of the insurability of the insured, satisfactory to the company, be furnished. Application for revival after two years from such date will receive equitable consideration.

41 Change of Beneficiary: The insured may at any time while this policy be in force, by written notice to the company at its Home Office, change the beneficiary or beneficiaries under this policy, such change to take effect only upon indorsement of the same on the policy by the company, whereupon all rights of the former beneficiary or beneficiaries shall cease; provided, however, that the insured shall have attained to majority according to the laws of the State in which the insured resides, and that no such change of beneficiary shall be valid if the policy or any interest therein be assigned at the time of such change.

COPY BOUND CLO

Installment Privilege: The amount insured under this policy is payable in one sum, but may be made payable instead in equal annual installments in any number from two to twenty-five, or may be made payable to the beneficiary in equal annual installments, to continue for twenty years and so long thereafter as the beneficiary shall live; subject to the terms and conditions under the heading "installment Privileges" on the fourth page hereof.

Trust Fund Privilege: At the time this policy becomes payable as a claim the amount insured, or any portion thereof not less than $1000 may be left during the life time of the beneficiary in trust with the company, and the company will pay thereon interest at the rate of three per cent. per annum, together with such annual dividend as may be apportioned by the company. The said trust fund shall be paid at the death of the beneficiary, but may be withdrawn at any time with accrued interest. The trust fund privilege shall be inoperative if the amount payable under this policy be less than $1000 or if the beneficiary be a corporation or a firm.

Dividends.

This policy is issued on the five year dividend plan, and at the end of each fifth year from its date, if in force, will be credited with a dividend from the surplus apportioned by the company to policies of the same class. Such dividend may be applied, as the insured may elect, to purchase a participating paid-up addition to this policy or to reduce the premiums hereon during the ensuing five years, or may be withdrawn in cash by the insured.

If this policy be continued in force, the insured shall notify the insured in writing, not more than three months after the end
42 of each dividend period, which mode of settlement he selects. Otherwise the company will reserve the right to make the selection.

Provisions.

Payment of Premiums: This policy is based upon the payment of premiums annually in advance, but if premiums be made payable in quarterly semi-annual installments, any future installments of the premium for the current policy year remaining unpaid at the maturity of the policy shall be considered an indebtedness to the company on account of this policy. Premiums are payable at the home office of the company, but may be paid to an agent of the company on or before the dates when due, in exchange for official receipts signed by the president or secretary and countersigned by an authorized agent of the company. If any premium be not paid when due, this policy shall be void and all premiums forfeited to the company, except as herein provided.

Indebtedness: Any indebtedness to the company on account of this policy will be deducted in any payment or payments or in any settlements under this policy.

Modifications, etc.: No condition, provision or privilege of this policy can be waived or modified in any case except by an indorsement hereon, signed by the president, one of the vice-presidents,

the secretary, the actuary or the associate actuary. No agent has power in behalf of the company to make or modify this or any other contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the company by making any promise, or making or receiving any presentation or information.

Assignments: If this policy shall be assigned, the assignment must be in writing, and the company shall not be deemed to have knowledge of such assignment unless the original or a duplicate thereof is filed at the home office of the company, and its receipt duly acknowledged. The company will not assume any responsibility for the validity of an assignment.

Sucide: If within one year from the date hereof the insured shall die by suicide—whether sane or insane—or in conse-
43 quence of his (or her) own criminal action, the liability of the company shall not exceed the amount of the premiums paid on this policy.

Incontestability: This policy shall be incontestable after one year from its date if all due premiums shall have been paid.

Mis-statement of Age: If the age of the insured be misstated, the amount payable under this policy shall be adjusted in accordance with the correct age of the insured.

Installment Privilege.

Written request specifying the number of instalments in which the amount insured under this policy is to be paid, or whether the instalments are to be continuous, must be made by the insured while this policy is in force; such request may be subsequently withdrawn or the number of instalments changed at any time during the continuance of the policy, upon notice to the company in writing, such request or subsequent notice to be operative only upon indorsement by the company upon the policy.

The amount of such instalments shall be based upon the amount insured under this policy, together with any paid-up additions, and shall be determined from the tables given below.

The first instalment shall be payable at the same time that the original amount would have been payable under this policy, and subsequent instalments shall be payable on the succeeding anniversaries thereafter.

Instalments—From Two to Twenty-five.

Number of Instalments	2	3	4
Amount of each Instalment per $1,000	$507	$343	$261

5	6	7	8	9	10	11	12	13
$212	$179	$156	$138	$125	$114	$105	$98	$91

14	15	16	17	18	19	20	21	22	23
$86	$81	$77	$74	$71	$68	$65	$63	$61	$59

24	25
$57	$56

44 Instalments—Conditions.

Age last birthday of Beneficiary at death of Insured	Under 16	16	17	18	19
Amount of each Instalment per 1,000	$40	$41	$41	$41	$41

20	21	22	23	24	25	26	27	28	29	30
$42	$42	$42	$43	$43	$43	$43	$44	$44	$45	$45

31	32	33	34	35	36	37	38
$45	$46	$46	$47	$47	$48	$48	$49

Age last birthday of beneficiary at death of Insured	39	40	41	42	43
Amount of each instalment per $1,000	$49	$50	$51	$51	$52

44	45	46	47	48	49	50	51	52	53	54
$52	$53	$54	$54	$55	$56	$57	$57	$58	$59	$59

55	56	57	58	59	60	61	Over 61
$60	$61	$61	$62	$62	$63	$63	$64

Each instalment under this policy, except the first, will be increased by such annual dividend as may be apportioned by the company.

At the time any instalment is due the remaining instalments, if any, may be commuted, unless the company shall have been otherwise directed by the insured in writing, at the rate of three per cent. per annum compound interest and the equivalent value withdrawn in one sum; provided, if the instalments be continuous, those instalments payable to the beneficiary more than twenty years after the maturity of the policy cannot be commuted.

The legal holder hereof at the time the policy becomes a claim shall have the privilege of having the amount insured under the policy payable in instalments as herein provided, unless the company shall have been otherwise directed by the insured in writing.

If no one be designated as beneficiary, or if there be more than one beneficiary under this policy, or if the beneficiary be a corporation or a firm, it cannot be made payable in continuous instalments.

45 Proviso.—The instalment privilege shall be inoperative if the amount payable under this policy be less than $1,000.

Illustration.—A policy under which $5,000 is payable in one sum at death may be made payable in twenty annual instalments of $325 each ($65 per $1,000), or if the beneficiary be 35 years of age at the death of the insured, the policy may be made payable in annual instalments of $235 each, ($47 per $1,000), to continue for twenty years at least and as long thereafter as the beneficiary shall live. If the beneficiary die before twenty instalments be paid, the remaining instalments will be paid to the executors, administrators or assigns of the beneficiary.

NEWARK, N. J., —— —, 190–

Received from The Prudential Insurance Company of America — Dollars, in full for all claims under the within policy terminated by —.

—— ——,

Witness:

—— ——.

Number 674,931.

The Prudential Insurance Co. of America.

Home Office, Newark, N. J.

Insurance on the Life of John A. Salgue.

Amount, $5000.
Date, July 10th, 1905.
Annual Premium, $175.20.

The plaintiff then introduced policy of the Aetna Life Insurance Company on the life of John Andrew Salgue, dated July 15th, 1906, of six thousand ($6,000.00) dollars, which policy was as follows:

No. 65,192. $6000.

4566.

Aetna Life Insurance Company of Hartford, Connecticut.

46 This policy of insurance witnesseth: That the Aetna Life Insurance Company, in consideration of the statements, answers and warranties contained in or indorsed upon the application for this policy, which application is copied hereon and made a part of this contract, and in further consideration of the annual premium of one hundred and sixty-nine dollars and forty-four cents, to be paid to it at or before five o'clock P. M. of the fifteenth day of July in each and every year during the continuance of this policy, hereby insures the life of John A. Salgue, hereinafter called the insured, of Macon, County of Bibb, State of Georgia, in the sum of six thousand dollars, payable at the home office of said company in Hartford, Conn., on the surrender and discharge of this policy, either at the end of the policy years falling nearest to age eighty-five, if the insured is then living, or, on receipt and approval of proofs of the death of the said insured during the continuance of this policy, and any indebtedness to said company on account of this policy, or any premium for the current year remaining unpaid shall first be deducted therefrom.

The said sum insured shall be payable as a death claim to his executors, administrators or assigns. The said sum insured becoming due during the life time of the insured, also the cash surrender value hereinafter described, shall be payable to him.

The beneficiary above designated may be changed at any time during the continuance of this policy, provided the policy is not then assigned and is then returned to said company with a request for such change, legally executed by the insured on a form to be furnished by said company for that purpose.

After one year from the date hereof all matured premiums having been paid, as herein required, and the age correctly stated in the application, this policy shall be indisputable except for army or naval service without a permit.

This policy is issued and accepted subject to the conditions, provisions and benefits printed on the reverse of this page, which are hereby referred to and made a part hereof.

In witness whereof, the said Aetna Life Insurance Company has by its president and secretary (or ass't secretary) signed and executed this contract in the City of Hartford, and State of Connecticut, this fifteenth day of July, 1905.

W. G. BURKELEY, *President.*

C. E. COLLINS, *Secretary.*

47

Non-Participating Life.

Conditions, provisions and benefits which are made a part of the within policy:

Premium Payments.

Grace in Payment of Premiums.

Section 1. This policy shall not take effect until the first premium hereon shall have been actually paid during the lifetime and good health of the insured and within sixty days from the date hereof, a receipt for which payment shall be the delivery of this policy. If any subsequent premium be not paid when due, then this policy shall cease and determine subject to the non-forfeiting features hereinafter described, except that a grace of thirty days, during which time the policy remains in full force, will be allowed for the payment of any premium, after the first, provided that with the payment of such premium, interest is also paid thereon for the days of grace taken, but for any reckoning hereinafter named the time when a premium becomes due shall be the day stipulated therefor on the first page hereof. No premium shall be considered paid unless a receipt shall be given therefor, signed by an executive officer of said company, and if any obligation given in payment or part payment of any premium is not paid when due, this policy shall then cease and be treated as if no such obligation had been given.

Conditions Applicable During the First Year Only.

Section 2. If the insured shall, within one year from the date hereof, commit suicide, while sane or insane, or be or become intemperate, or shall at any time within said year travel or reside north of the 60th degree of north latitude, then *and* each and every of the foregoing cases this policy shall be null and void.

Service in Army or Navy.

Section 3. If the insured shall at any time be engaged in army or navy service without a permit therefor, signed by an executive officer of said company, then this policy shall be null and void, but after one year from the date hereof and before such service is entered upon, a permit therefor will be granted, if requested,
48 in consideration of an extra premium of not exceeding two and one-half per cent. of the sum insured, payable annually in advance.

Extension of Full Sum Insured.

Section 4. If default occurs in the payment of any premium under this policy after the premiums have been paid for three years or more, this policy shall then cease as to the right to pay further premiums, but shall, if there is no indebtedness to said company against it, be extended as temporary life insurance for the full sum hereby insured during the time specified in the following table, reckoned from the time when the first unpaid premium became due, at the expiration of which time it shall wholly cease and be void, except for the endowment value, if any, shown by the next column of said table, payable only at the expiration of the endowment term, if the insured is then living. Should the death of the insured occur within three years after the time when the first unpaid premium fell due, and while this policy is in force as temporary life insurance, there shall be deducted from the amount otherwise due from said company the premium that would have been paid had there been no default in the payment of premium with interest thereon.

Paid-up Policy. Cash Surrender Value.

In lieu of such extended insurance, a paid-up non-participating stock policy will be issued for the amount shown by the following table, or, at the expiration of the fifth or of any subsequent policy-year, said company will pay the amount of cash shown by the following table, provided in either case that this policy be surrendered to said company and a written application made for said paid-up policy or cash value within three months after the time when the first unpaid premium became due Said paid-up policy shall bear the date of its issue and be due and payable in event of death as herein provided, or, at the expiration of as many years from its date as there are years of this endowment terms, less the number of full years expired under this policy.

Loan.

Section 5. After the expiration of three years from the date of this policy, and before default in the payment of premium,
49 said company will loan upon the same the amount shown by the following table.

Assignments.

Section 6. A duplicate of any assignment of this policy shall be filed with said company; but in no case does said company guarantee the validity of an assignment; and any claim against said company arising under this policy, made by an assignee, shall be subject to proof of interest.

All Agreements Must Be Signed by an Officer.

Section 7. All agreements made by said company are signed by one of its executive officers. No agent or other person not an executive officer can alter or waive any of the conditions of this policy, or make any agreement binding upon said company.

Not Entitled to Dividend.

Section 8. This policy shall not be entitled to share in the surplus earnings of said company.

Directions Concerning the Use of the Table.

The figures given in the table are for one thousand dollars of insurance, and the values for insurance of a greater or less amount can be calculated therefrom. The table is based on the assumption that there is no indebtedness against the policy, and that all the premiums have been paid to the end of the policy year for which the value is given.

If there is any indebtedness to the company against the policy, the loan or the cash surrender value will be reduced by the amount of said indebtedness, and the amount which shall be extended as temporary life insurance (also the endowment value, if any) or the amount of paid-up policy to be issued, will be reduced in the proportion which said indebtedness bears to the cash surrender value hereof. For a loan or cash surrender value the policy must be unincumbered by the interest of minor children and a valid loan note or surrender papers must first be executed under such regulations as are prescribed by the company. In determining the extension, the paid-up policy, the cash or loan value, premiums paid for entire years only will be considered.

50 [Written on margin:] The restrictions in Section 2, regarding residence south of 32 degrees, were erased before signing.

Table of Values per $1000.00 of Insurance. Issued at Age of 42.
Non-participating Life.

(End't at 85.)

At end. of year	Extended insurance. Yrs.	Days.	Endowment value.	Paid-up policy.	Loan.	Cash value.
3	1	181	No endowment value in addition to these extensions.	$ 61	$ 14	
4	3	2		102	31	
5	4	138		140	47	$ 52
6	5	226		179	64	71
7	6	259		215	82	91
8	7	245		252	98	109
9	8	174		285	116	129
10	9	64		319	135	150
11	9	276		352	153	170
12	10	76		383	172	191
13	10	210		413	192	213
14	10	312		443	210	233
15	11	28		472	230	256
16	11	79		500	249	277
17	11	115		526	270	300
18	11	129		552	290	322
19	11	130		576	310	345
20	11	120		600	330	367
25	10	238		702	427	474
30	9	239		784	521	579

Values for later years not shown in this table will be calculated upon the basis as those given.

Plaintiff introduced copy of the application for insurance attached to the policy, and which was dated July 8th, 1905, which was as follows:

Copy of the Application.

Executive Officers.

President,
Vice-President,
Secretary,
Ass't Secretary.

51 Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am in good health, of sound body and mind, and that the following statements signed by me are full, correct and true; and that I have no knowledge or information of any disease, infirmity or circum-

stance not stated in this application which may render insurance on my life more hazardous than if such disease, infirmity or circumstance had never existed; and I do hereby agree that the declarations and warranties herein made, and the answers to the following questions, together with those signed by me on the second page of this application, shall be the basis and form part of the contract (or policy) between me and the said company, and that if the same be in any respect untrue, said policy shall be void; and I further agree that the insurance hereby applied for shall not be binding upon said company until a policy has been issued, nor until the amount of premium as stated therein has been received by said company, or its authorized agent, during my lifetime and good health, and a receipt given therefor, signed by an executive officer of said company; and I further agree that no statement or declaration made to any agent, examiner or any other person, and not contained in this application, shall be taken or considered as having been made to or brought to the notice or knowledge of said company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its executive officers, and that no other person can grant insurance or make any agreement binding upon said company.

Questions and Answers Above Referred to.

1. What is your name? Give Christian name in full and plainly written.

John Andrew Salgue.

2. What is your present occupation or employment? If more than one, state all. (If a clerk, salesman, manufacturer, mechanic or laborer, state what class of goods sold, manufactured or handled.)

Supt. Brick Works.

3. Have you any intention of changing your occupation?

52 No.

4. What employments have you been heretofore engaged in?

Same as above.

Where do you reside:

Street and Number	Town:	County:	State:
	Macon,	Bibb,	Ga.
What is your business address:	"	"	"

6. What kind of policy is desired?

Ordinary Life, Non-partc.

7. What amount of insurance is desired?

$6000. Premium $169.44.

8. What is the name, residence, relationship of the person to whom the sum insured shall be payable if it becomes due by reason of your death? (If not a near relative, state what interest the proposed beneficiary has in your life.)

My estate.

NOTE.—Unless otherwise requested herein, policies for the benefit of near relatives becoming payable by reason of death of the insured will be written payable equally to such beneficiaries as may survive the insured, and the remaining installments equally to such beneficiaries as may be living when an installment falls due, and in event of the death of all, the remaining installments, if any, to the executors, administrators or assigns of the last surviving beneficiary. Policies becoming payment as endowments will be written payable to person whose life is insured.

9. What is the place and date of your birth? (Be sure to answer correctly.) Place, Gallopolis, Ohio; year, 1863; month, 28th day October.

10. What is your age next birthday? Be particular to answer correctly.

42.

11. Are you married?

Yes.

12. Are you, or have you been connected with the manufacture or sale of malt or spirituous liquors? If so, when and how?

No.

53 13. Have you been, or are you now, employed in the army or navy?

No.

14. What are the names and residences of all the physicians whom you have personally employed or consulted during the last five years?

Dr. James T. Ross, Macon, Ga.

15. What is the name and residence of an intimate friend?

John T. Moore.

16. Has any proposal or application to insure your life been made to any company, association or agent on which a policy of insurance is now pending? Or has any such proposal or application ever been made for which insurance has not been granted, or on which a policy or certificate of insurance was not issued in full amount, and of the same kind as applied for? If so, state particulars, and the names of all such companies, associations or agents.

None.

17. What amounts are now insured on your life and in what companies or associations? If insured in this company, state the number and amount of each and every policy?

$2000, Prudential.

$2000, Mutual Life.

18. Has any company or association in which your life has ever been insured, or the agent thereof, expressed an opinion that the risk was undesirable, or refused to reinstate any such insurance after it had lapsed? If so, state particulars and the names of all such companies, associations or agents.

No.

19. Has any physician expressed an unfavorable opinion upon your life with reference to life insurance?

No.

Dated at Macon, Ga., this 8th day of July, 1905.
Applicant must sign here:

JOHN ANDREW SALGUE.
(Write Christian name in full.)

In presence of:
B. H. RAY,
W. E. HAWKINS.

54 (Page 2 of Application.)

Answers Given to Examining Physician.

20. What is your name? (Give Christian name in full.)
John Andrew Salgue.

21. Have you ever had any of the following diseases? Answer Yes or No opposite each. If yes, state the date, duration and severity of illness.

Appendicitis,	No.
Asthma,	No.
Bronchitis (Chronic)	No.
Consumption,	No.
Disease of the heart,	No.
Dropsy,	No.
Fits,	No.
Fistula,	No.
Gall Stone,	No.
Gravel,	No.
Habitual headache,	No.
Hip joint disease,	No.
Liver complaint,	No.
Neuralgia,	No.
St. Vitus Dance,	No.
Spitting of blood,	No.
Syphilis,	No.
Tumors,	No.
Ulcers,	No.
Venereal Disease,	Gonorrhoea.

22. Have you had inflammatory rheumatism; if so, and how often?
Slight sub-acute attack seven years ago. No return.

23. Are you subject to dyspepsia, dysentery or diarrhoea?
No.

24. Have you had during the last seven years any disease or severe sickness? If so, state the particulars of each case and the names of the attending physicians.
No.

25. Have you either gained or lost in weight during the past five years? If so, give particulars.
Not varied in 15 years.

55 26. Has either of your parents or any of your brothers, sisters, uncles, aunts or grandparents been afflicted with rheumatism, insanity or with pulmonary, scrofulous or any hereditary disease?

No, except one sister, consumption.

(If so, answer "no except," followed by stating each and every case separately.)

27. FAMILY RECORD:

	LIVING.		DEAD.		
	Age.	Health.	Age.	Cause of Death.	How Long Sick.
Father	57			DK.	DK.
Father's father	DK.			DK.	DK.
Father's mother	"			DK.	DK.
Mother	42			Submersion.	
Mother's father	90			Old age.	DK.
Mother's mother	80			"	DK.

	LIVING.		DEAD.		
	Age.	Health.	Age.	Cause of Death.	How Long Sick.
Brothers			21	Boiler explosion.	Few hours.
			26	R. R. accident.	Killed instantly.
Sisters	28	Good health.	32	Acute Phthisis.	3 months.

57 28. Have you ever been intemperate in the use of either malt or spirituous liquors, or used any drug habitually?
No.
29. Do you use either malt or spirituous liquors daily or nearly every day? If so, what is used and the approximate amount?
No.
30. Have you ever taken any cure or treatment for any habit? If so, what and when?
No.

Additional Questions to be Answered When Applicant is a Woman.

31. Are you married or single? 32. How long married? 33. Number of labors? 34. Date of last labor? 35. Were labors normal? 36. Have you miscarried, and from what cause? 37. Are you now pregnant? 38. Is your menstruation regular and normal? 39. Is there any organic disease of uterus or appendages, or is any suspected? 40. Are there any tumors in the breasts or any other part of the body?

Dated at Macon, Ga., this 8th day of July, 1905.

(Applicant must sign here:)
JOHN A. SALGUE.
(Write Christian name in full.)

The medical examiner must sign here as a witness to the signature of the applicant.
In presence of:
CHARLES C. HARROLD,
Examining Physician.

It was admitted that the death of John A. Salgue, the insured, had occurred at the time as stated in the petition of plaintiff. It was also admitted that John T. Moore was duly appointed administrator of John A. Salgue.

It was also admitted that due proof of loss had been made to the Aetna Life Insurance Company, and to the Prudential Insurance Company upon said policies of insurance, and that both defendant companies refused payment. The Prudential tendered back its premium of $210.00.

58 This closed the evidence in opening for the plaintiff.

Thereupon the following evidence was introduced by and upon behalf of the defendants in this case:

C. M. ADAMS, sworn for the defendants, testified as follows:

Direct examination.

By Mr. BLACK:

My name is C. M. Adams; I live in Macon; I am manager of the Prudential Insurance Company. Yes, sir; I was connected with

the Prudential Insurance Company on July 6th, 1905. I have represented that company since July, 1900, here in Macon. Yes, sir; I took this application on the life of John Andrew Salgue. Yes, sir; I am the agent who wrote it. Yes, sir; Mr. Salgue signed that in my presence. Yes, sir; I witnessed his signature. Yes, sir; that was on July 6th, 1905. Yes, sir; I asked those questions on that application of Mr. Salgue and wrote those, his answers. Yes, sir; Mr. Salgue answered "No" to Question 4-B in the application, which is as follows: "Has any company or association ever declined to grant insurance on your life, or issue you a policy of a different kind, or for a sum less than that applied for? Answer yes or no." To Question 4-D of the application, which is as follows: "Is any other application for insurance on your life pending at this time in another company; if so, give the name of the company?" He answered: "Yes, Provident Savings Life." I went to the office of the Bibb Brick Company, out in South Macon here, Mr. Moore's office, to write Mr. Salgue this insurance. As to why I happened to go there, Mr. Moore passed me on the street one day, up in front of my office, and asked me to go out there; he said I could write Mr. Salgue a policy. As to whether I knew of it, Mr. Moore asked me to go out to his office and see Mr. Salgue, said he wanted some more insurance, and if I would go out there, I could write it. That was Mr. John T. Moore, the plaintiff in this case. Yes, sir; I went to his Brick Company, and wrote Mr. Salgue. That policy was delivered to Mr. Salgue at Mr. Moore's office. As to what happened at that time, when I went out with the policy, Mr. Salgue stated that he had gotten in some other insurance, and he did not know whether he could afford to take my policy or not. I re-
59 marked it was little peculiar, and contended for my policy; I did not know there was anything like that coming up, and Mr. Moore remarked: "You take the policy, and I will pay for it;" and Mr. Moore gave me his check for the premium, and accepted the policy.

Cross-examination.

By Mr. O. J. WIMBERLY:

I am manager now for the Prudential Insurance Company of America. At that time I was its general agent, over quite a large territory. Yes, sir; I had charge of that territory. No, sir; I was not the only representative they had in that territory. Yes, sir; I was the only representative they had, except those who worked under me. Yes, sir; I had entire charge of everything for that company in that territory. Yes, sir; he only gave me the name of one policy as being pending when I originally wrote the application, the Provident Savings. When I went to deliver the policy, he told me about one policy that he had given a note for to another agent when the application was taken, which he did not know he had signed a note, and said they had the note, and he would have to pay the note. I think that was the Aetna. As to whether I stated to the jury that when I got out there I found he did not

want to take the policy, because he had gotten a lot of other insurance I did not know anything about, he stated he had taken this particular policy in the Aetna, and had given a note at the same time. I don't remember that he mentioned any other notes at all, except that Aetna policy. As to whether I remember that he wanted to back out of taking this because he had enough other insurance, he remarked that he did not know whether he could afford to pay the premiums for so much insurance; that he would be compelled to pay that note he had signed for the other. Yes, sir; after he told me that he had so much insurance he did not know whether he would be able to pay the premiums, I, as general agent, still delivered him his policy. No, sir; I made no objection, and asked him no questions as to what other insurance he had. As to whether I insisted on his taking the policy when he wanted to back out, I think I insisted that he pay the premium. No, sir; I did not insist so much that I finally made a rebate from the premium in order for him to take it. No, sir; I did not *know* [knock] off my commission, or a part of it. I don't remember that I knocked off enough to bring the premium down to about $144; the policy calling for $175. As to whether the amount Mr. Moore paid
60 me was the amount I took, I only remember that I took Mr. Moore's check; I don't know whether it was for the full premium or not; my recollection is it was. As to whether I was so anxious to write this insurance that I wrote him two policies, so as to give him his choice of whichever one he would take, whether I didn't have another policy, too, I am not clear on that; I don't remember that; I don't know whether I brought out the extra policy or not. I don't think I had a participating and a non-participating policy. The participating policy is the more expensive. My recollection is he took the non-participating. Yes, sir; I can tell by looking at it. This is a participating policy. The difference is, one has a dividend; one premium is a little higher. As to whch one he applied for, the dividend policy has the premium loaded for the dividend; it has a larger premium than the non-participating policy; I don't know how to express it; it has a larger premium, and under the larger premium, you will get a dividend at stated times, annually, or as the contract calls for. As to whether the actual cost is the same in the long run, it is supposed to be about the same thing. The Prudential Insurance Company, I will state, now have adopted one form only, and only write non-participating insurance. This application was for a five-year tontine policy. The application was for a participating policy. As to whether the application was for the policy he actually got, or a different kind, it is an application for the policy he actually got. Yes, sir; this was the more expensive kind of policy, and the one I made the most commission out of. As to whether I remember whether or not he applied for a cheaper policy, and I gave him his choice, but he finally took the more expensive, I remember he applied for this policy, and this policy was delivered under the contract; there is his signature to the application. Mr. John T. Moore was present when this application was taken, and perhaps someone else in the office; I don't

ember who. I think Mr. John T. Moore filled out that appli-
n; that is my recollection, he and I standing at the desk, and
John T. Moore wrote those answers. Mr. Salgue was standing
he desk answering those questions. No, sir; those answers are
n the handwriting of Mr. John T. Moore; I wrote this whole
. Yes, sir; I was mistaken about Mr. Moore; I thought Mr.
e filled it out. As to whether I want to correct my answer
t there being two policies, and I tried to get him to take the
higher priced kind if I could, I wrote this letter to the com-
pany, and begged them to send me an extra policy, non-
participating. I don't remember whether they sent it, or
this is the one delivered. Yes, sir; I remember that I asked
to send me two policies on the life of this man; I did not ask
vo policies to be delivered, but two to be selected from, one of
vo to be selected. No, sir; it is not a fact that Mr. Salgue in-
d me at the time he applied for this policy, that there were a
er of different agents that were trying to write his life, and
nted me and all of us to get our policies, and he would select
n them, and that he wanted an aggregate of ten thousand
s insurance. He did not tell me that, that I remember. No,
is not a fact that he told me he wanted about this amount of
nce and that I was in a great rush to get it there because I
there were a number of other agents trying to write him; I
ld he wanted about six thousand dollars in insurance; per-
e had four thousand dollars, and wanted six more to make it
understood it that way. Yes, sir; I understood he wanted
thousand dollars insurance. No, sir; it is not a fact that Mr.
told me to write the policy, and he would let the others
and he would select the one he liked best after he got it; I
recollect any conversation like that. As to why I wrote to the
ny to write two policies and see which one he preferred, if he
t to select any after they all came, I guess I had heard about
her insurance that was being brought out; I knew they were
g on a non-participating basis, and had ordered a six thousand
policy to defeat my five thousand dollar participating policy.
sat down and wrote the Company on the 8th, after this ex-
ion went in, to send me a non-participating policy, that I
compete with these non-participating contracts. As to
r I did know that I was competing with other insurance com-
and wrote so I would have the choicest stuff in order to com-
th them, I found it out on the 8th. Yes, sir; I informed the
ıy of that fact before I delivered this policy to Salgue. As
ther I got a non-participating policy, and took them both
re to Salgue to give him his choice, I don't remember whether
a policy ever came, or not. Yes, sir; this is a letter I wrote
iled to the Company, and which they received before the
vas delivered, but I don't think that that policy was ever is-
at second policy there asked for; I don't think it ever came
don't think the policy I wrote for as a competition policy

was ever issued. I don't remember that I told Mr. John A.
62 Salgue in the presence of Mr. John T. Moore, that I had other policies in my office, and if he wanted it I would go and get it, but I would give him this high-priced policy and charge him the same premium as the other. As to whether it is true that, when I went out there the first time and wrote the insurance, Mr. Salgue told me in Mr. John T. Moore's presence and hearing that he wanted but ten thousand dollars insurance altogether, and that if I was willing to write it that way, he would let me do it, and when I got mine, he would compare the different policies, and if mine was as good as the others, he would take mine, I don't remember any such conversation; I have a great many transactions of insurance, and I don't remember that. No, sir; he did not tell me on that occasion that he had applications pending in other companies, and might not take it; if he had, it would have appeared in the application. No, sir; he did not tell me in the presence of Mr. Moore words to the effect that he had not been rejected, but he started to make application to another company, the Penn Mutual and that he had withdrawn the application. No, sir; I did not know anything about that Penn Mutual at that time. As to what it was I said exactly, about attempting to get or having gotten other insurance when I went out to the Brick Yard to get the premium, and when it was he said, Mr. Salgue, when I went to deliver the policy, said he had applied in the Aetna for a policy, and at the time he had applied for it the agent had taken a promissory note from him which he did not know he had signed, he did not know he was signing, and he would be compelled to pay that note. No, sir; he did not speak of any other notes, at all. As to whether I meant to limit my testimony now, in saying that he had applied for other insurance, to his statement that he had only obtained insurance from the Aetna, at the time I delivered the policy, I understood that he had accepted the Aetna's policies which had gotten in ahead of mine, or he had signed a note for it, and would have to accept it when it came. Mr. Moore insisted on his taking my policy, and gave me a check for it. I do not recall that anything definite was said about any other insurance in any company except the Aetna. I do not remember any definite statement that he had obtained other insurance in other companies. No; when I wrote the company to send both kinds and I would try to get him to take the participating; "I will have him sign an application for a non-participating, but I will do my best to deliver the participating policy, please be as prompt
63 as possible in sending it, otherwise I am afraid I will lose the business," it was not because I had heard a number of insurance people were about to write him; that was because I had heard the Aetna had written him a non-participating policy for six thousand dollars to deliver against my participating policy. If you will allow me to explain, there are certain classes of people my Company won't deliver non-participating policies to, laboring men and men who have hazardous work; in that case, I don't know whether they would deliver a non-participating policy, or not.

Redirect examination.

By Mr. BLACK:

s to whether, in that letter which has been shown to me attached
e application, in which I ordered out the extra policy, that was
usual or unusual thing, it is very common; I do it very often;
y often order a man two kinds to select from; unless I can
y the man perfectly when he places his application, I some-
order another policy of a different kind. A man may be
cided as to what kind of policy he wants, and I frequently
out two kinds on the same application, and deliver one or the
, and return one or the other.

By Mr. WIMBERLY:

to whether, where a man is in doubt as to whether he will take
insurance in mine or another company, I will order out the
kind as the other company orders out, so, if he is over-per-
d by the other people I can furnish that same kind of insur-
I do order the same kind of policy; I did not order this extra
with a view of selling him more than five thousand dollars,
as to give him choice of the two kinds, choice with another
ny.

By Mr. BLACK:

, sir; the other Company was the Aetna.

W. R. WINCHESTER, sworn for the defendant, testified as
s:

Direct examination.

By Mr. BLACK:

sir; I am the Medical Examiner for the Prudential in Macon.
I suppose I have been such Medical Examiner twelve or
fifteen years; I don't remember. Yes, sir; I made this ex-
amination (referring to paper exhibited by counsel purport-
be the medical examination of John A. Slague.) Yes, sir;
l him the questions contained in that medical examination.
ded the answers just as he gave them. Question Thirteen of
dical examination reads: "Has your application for insurance
en rejected, postponed or modified by an insurance company,
ent order or benevolent order?" In reply to that, he said:
Policy now pending with the Provident Savings." Question-
and Seventeen of the medical examination, and the answers
o them by Mr. Salgue, are as follows: "Are you in good
" "Yes, sir." "When were you last attended by a physi-
"Early Spring, 1905, bilious fever for two days." Question
general question, for a good many troubles; among them is
lave you ever had palpitation of the heart?" He said: "No";
osia?" "No." Yes, sir, he signed that medical examination.
hether I knew, at the time I examined Mr. Slague, that he
plied for insurance elsewhere, I knew he had an old policy

in a company I examined for. Yes, sir; an old policy with the Prudential; I had examined him for a policy in 1902, March 26th. I did not know whether he had any application pending at the time in any other Company, except the Provident Savings, which is stated in that report. No, sir; I did not know that he had been examined by Dr. Little for insurance in the Penn Mutual. No, sir; I knew nothing about that. No, sir; I did not know that he had been examined for the Sun Life at that time. No, sir; I did not know that he had been treated by Dr. McAfee for chronic acid gastritis. No, sir; I did not know that he had been treated by Dr. McAfee for heart trouble. No, sir; he did not inform me in reference to any of these matters I have just been asked about, nothing except that little bilious attack be said there some time prior; the bilious attack is in the report; I have to go by that; it was four years ago; I don't remember. I don't remember how long I have been the examiner for the Prudential Insurance Company, twelve or fifteen years. Yes, sir; I suppose I am the examiner for two or three dozen other companies. I have been examining for all of them for several years. A mitral murmur is a murmur due to organic trouble with the valves of the heart. As to the effect it would have on the heart and on a man's life, on his insurance life, the man himself might not know he had it until it became very far advanced, but no medical examiner would recommend a risk where he dis-
65 covered a mitral murmur. As to what my recommendation would have been if I had known that this man had a mitral murmur, I would not have recommended the risk; I would have classed him as a poor risk. Dyspepsia is a very general term. Chronic acid gastritis is an affection of the stomach where the digestion of the food is involved; chronic means of long standing, and the acid means an acid condition of the stomach. No, sir; there is no difference between chronic gastritis and chronic acid gastritis, except in one you find an acid condition of the stomach, and in the other you would not. Chronic gastritis, or dyspepsia, is the popular name for it. As to what would have been my recommendation in reference to that risk, if I had known that Mr. Salgue had had chronic acid gastritis from January up to the date of my examination, a period of practically six months, and had been repeatedly treated by Dr. McAfee for that, and during that time his stomach had been repeatedly washed out by Dr. McAfee, I would have recommended that it be postponed, as it is a curable disease. Yes, sir; I would have recommended it to be postponed until he was well, or recovered from his gastritis. I would not have recommended him to the Company, if I had known that it was pending at the time. As to whether I would or would not have approved him if I had known he had a mitral murmur of the heart, I would have reported him as a poor risk if I had known that.

Cross-examination.

By Mr. WIMBERLY:

As to whether I would have found it, if he had a mitral murmur, a mitral murmur is sometimes very hard to find. As to whether I

mined him very carefully, I examined him; I suppose I exam-
d him carefully; it was a second examination; I don't know that
xamined him as much as the first. No, sir; I didn't find it. The
y way to find it is by sound. Yes, sir; that was the examination
ade. No, sir; a patient himself don't know he has it. The only
it is discovered that he has a mitral murmur is by the physician
makes the examination listening and hearing it. Yes, sir; I
e for the last twelve or fifteen years or twenty years, made a
ialty of careful examinations of people as insurance risks. Yes,
I stated that I examine for some two or three dozen insurance
panies. I don't know whether I examine for most of them that
do business in Macon; I suppose I do, not all of them. I
can recall probably half a dozen life insurance companies
that do business in Macon, besides the two or three dozen
I examine for; there may be others.. Yes, sir; I try to be very
ul. Yes, sir; I try to be exceedingly careful in listening for
hing of that sort. I didn't find anything indicating mitral
nur. As to whether, with the care I use on a policy of that
I would have found it if it had been there, it would have de-
ed on my hearing; you have to hear it; in many cases, you
have to stop the patient from breathing, and then you have
over the exact spot; a few inches one way or the other, you
not hear the sound. Yes, sir; I have very good hearing.
arily, I feel sure he has not got a heart trouble of that sort.
r; there was nothing in either of my examinations of this man
licate that he had a mitral murmur. No, sir; there wasn't any-
in appearance of the man to indicate it. Yes, sir; a heart
e of any length or standing will affect a man's appearance in
Some of the symptoms are shortness of breath, and liable to
a cough. No, sir; he did not have any of those symptoms.
r; it does not affect his countenance in any way, in the earlier
No, sir; it does not affect the man's physical vigor until the
stages. As to whether it does in the later stages, in many
where those symptoms follow, a good many symptoms can
it. Yes, sir; when anyone else examines a party, I still make
n examination, and use my own judgment. As to whether,
I speak of a man being rejected, that means rejected by the
ny, it is only the Company who is competent to reject. No,
is not very frequent, after a physician examines a man, that
n is notified that he might perhaps do better to withdraw his
tion before it is passed on at all, and that he very frequently
ws his application, so as not to be rejected; the Companies I
e for require the report to be sent in.

Dr. W. R. WINCHESTER, recalled for the defendants, tes-
tified:

Cross-examination.

By Mr. WIMBERLY:

sir; gastritis is very often a temporary condition. Yes, sir:
matter that usually yields to treatment. When it does, it

may leave no permanent effect on the health. As to whether it has any connection with any heart trouble, stomach troubles can follow heart troubles. Usually they do not. No, sir; heart trouble, if it existed, which was so slight that a trained medical examiner could not find traces of it, would not ordinarily cause gastritis. Yes, sir; gastritis may follow many diseases. Yes, sir; it may be caused by imprudence in eating, or drinking, too. As to whether there are any objective symptoms of gastritis, besides the subjective, there are symptoms that a doctor can see that lead up to it. No, sir; I did not discover any of those symptoms at the time that I examined Mr. Salgue for insurance. Yes, sir; my recollection is that I made a very careful examination. Yes, sir; I always do when I have to. As to whether, in my opinion as a medical examiner, Mr. Salgue had any organic affectation of the heart at the time I made the examination, I did not discover any. I don't think he had; by my examination alone, I would say he had no heart trouble. At the time, I did not discover any gastritis, and my questions did not elicit any. As to my opinion, as to whether or not he had chronic acid gastritis at the time I made the examination, as a medical expert, who has examined a great many risks, I did not find any, and I don't think he had any. Yes, sir; if he had had any, on such a serious examination, I think I would have discovered it. As to whether, if there had been any abnormal enlargement of the heart, I would have discovered it, there might have been some enlargement that would have escaped my examination. If there had been any large enlargement, I think I would have discovered it. Yes, sir; in examining a case, even where I don't know that he has been examined or turned down by any other doctor, I make a thorough examination. As to whether my examination would have been about the same, if I had known of his rejection, if I had known he had been rejected on account of heart trouble, I would have put him through certain exercises, as the least trouble probably when he was quiet would not have shown up. Yes, sir; I would make such examination as would determine the presence of heart trouble.

68 Yes, sir; in the great majority of cases, it would.

Redirect examination.

By Mr. BLACK:

The object of the exercises I would have put him through would have been to make sounds that would not have been done when he was quiet. Yes, sir; I mean heart sounds. I don't remember the weight of the average heart. I could not say about how big it is; it has been a long time since I had any anatomy on that line, I have forgotten certain lines. It is about 3½ inches or 4½ inches each way; I really don't remember. I didn't say that gastritis was always temporary; I suppose it is at times. As to whether I would say that chronic gastritis was temporary, it may have a limit; it doesn't follow indefinitely. After gastritis has lasted for some months, it is classed as chronic and acute. As to whether the word "chronic" takes it out of the temporary stage, it means it has existed some time. The heart and the stomach are just a few inches apart; the

diaphragm separates the thorax from the abdomen, the heart, which is above it, and the stomach, which is below it. Yes, sir; the stomach depends for proper performance on the proper condition of the blood; it has got to be fed from the heart. As to whether, if the heart is affected, and the stomach thereby is not properly fed with blood, it performs its functions properly, it would depend upon the extent of the heart trouble; every function would be impaired by a very serious heart trouble. As to whether it would be relatively impaired by stomach trouble, heart trouble might be so light that it would not affect the stomach perceptibly.

By Judge MILLER:

As to whether, at the time of this examination, my office and Dr. Little's were on the same floor in the same building, I don't know whether Doctor Little had left at that time, or not. It was about that time that he left. No, sir; Mr. Salgue did not tell me when he came to see me, that another doctor had told him something was the matter with his heart, that he had heart trouble. No, sir; nothing of that sort was said. As to whether that was the only occasion upon which I examined Mr. Salgue, or was consulted medically about him, I examined him in 1902. As to whether that was the only policy he was examined about, I don't think I
69 ever saw him except on those two occasions, when I examined him. Yes, sir; they were both for the same Company. No, sir; on the latter occasion, he never mentioned about any other doctor examining him, never said anything at all except that he said he had had a bilious attack, the previous fall I think it was, a slight bilious attack which passed off in just a day or two. As to whether that was the one Dr. Ross treated, I don't think he stated: it was a trivial matter; I regarded it *it* as trival, and he so stated. Yes, sir; it is very possible that I could examine the same man, say at an interval of two months, and at one time the heart trouble sometimes would escape me, and at another it would not. Yes, sir; it is owing to circumstances, and the man's condition at the time. As to whether gastritis may result from bilious attacks, I don't know whether I can say what a bilious attack is. When people say they are bilious, usually it is some little stomach derangement. As to whether gastritis can result from bilious attacks that result from great stomach derangement, most people regard bilious attacks as stomach attacks. What we regard as bilious attacks are connected with the stomach and the portal system, and in some cases there is an enlargement of the liver, but it is more likely to be stomach trouble, and in the neighborhood of the stomach. No, sir; doctors do not generally use the expression that a man has a bilious attack or biliary disease, without defining the disease with precision, except to satisfy the patient. It is generally regarded biliousness is a slight derangement. Yes, sir; a very large part of a doctor's duty is to satisfy his patient, if he has patience enough to listen to him.

By Mr. BLACK:

As to whether bilious attack is supposed ordinarily to concern

something the matter with the liver, the name might imply that, but the liver is not always involved. As to whether the gall bladder is concerned in bilious attacks, that is bilious colic.

Recross-examination.

By Mr. WIMBERLY:

Yes, sir; Mr. Salgue appeared to be in perfect health; yes, sir; a very vigorous man, erect and muscular also. Yes, sir; he had every appearance of a man in perfect health. Yes, sir; he would be regarded as a first-class risk. No, sir; if a man should die of heart disease within some ten months after he was examined by
70 me for this mitral murmur, his symptoms would not necessarily have been such that I would not have accepted him; sometimes they are very rapid in progress, and sometimes very slow. Yes, sir; generally speaking, they last a good deal longer than that.

Redirect examination.

By Judge MILLER:

Yes, sir; this man had the appearance of being a vigorous, robust, healthy man. Yes, sir; that is entirely consistent with the same man having heart disease in its first stage.

ANDERSON CLARK, sworn for the defendants, testified:

Direct examination.

By Mr. BLACK:

My name is Anderson Clark. I live in Macon. I have been in the insurance business for eight or nine years. Yes, sir; I was in the insurance business in June and July, 1905. In June, 1905, I was with the Penn Mutual; Mr. Hoge had the agency in Macon at that time. Yes, sir; I was local agent in Macon for the Penn Mutual Insurance Company of Philadelphia. Yes, sir; I wrote an application for Mr. John A. Salgue for the Penn Mutual, I think it was in June; what time in June I cannot say. Yes, sir; it was prior to his application to the Sun Life Insurance Company; I should say it was five or six days prior to that application. Yes, sir; I took a regular application from Mr. Salgue for the Penn Mutual. He applied for six thousand dollars. He signed the application; yes, sir. When that application was taken, I was in the office of the Bibb Brick Company. Mr. Salgue was Superintendent of the Bibb Brick Company. Yes, sir; I thing Mr. Moore is President of that. As to how it happened that I wrote Mr. Salgue this application, I had been talking insurance, explaining a certain other policy, a cheap form, to Mr. Moore, and Mr. Salgue was sitting in the office, and once when Mr. Moore went out, he and I got into conversation about that form of policy. Yes, sir; that is the way it started. Mr. Salgue wanted five thousand dollars at that time; in fact, when it was first mentioned between us, I fixed the amount; I fixed it at five thousand.

As to how I reached five thousand, I don't know; it is just
71 customary, if you write him more than one, to write five or ten. As to why that amount was increased to six thousand dollars, he told me when I was making out his application, that he already had four thousand in force; I persuaded him to make it six just to make it ten thousand; I just wanted as much as I could get. As to when I went to Doctor Little, he had just been appointed; it was his first examination for the Penn Mutual. As to what happened there, I took the application to Dr. Little, and told him to telephone to Dr. (Mr.) Salgue; he telephoned, I suppose, and made the appointment with him; possibly the next day, or the next, Mr. Salgue went to Dr. Little to be examined. No, sir; I did not go with him to the office. I think it was the next day after that, that I saw Dr. Little. Dr. Little told me he could not pass him, didn't think he could pass him, because he had heart trouble. As to whether anything else passed between myself and Dr. Little at that time, I was very much surprised when he told me he didn't think he could pass him, because Salgue was a man of such splendid physique, it was very much of a surprise. As to whether I communicated that to Mr. Salgue, I think Dr. Little saw him again; that is my recollection of it, when he told me positively he could not pass him. Yes, sir; Dr. Little told me. Then I wrote a note to Salgue, and gave it to an agent who was in an adjoining office, representing the Sun Life of Canada. As to the contents of that note, as well as I remember it, it was substantially a letter of introduction to Salgue for this Mr. Nowell of the Sun Life, and in there I told Mr. Salgue that I would advise him to make application with this Company, as it seemed the Penn Mutual could not issue him a policy on Dr. Little's examination, that I didn't think Dr. Little would pass him; that was about what it was. The next time I saw Mr. Salgue was several days later, possibly four or five days, maybe more than that. No; that was not before the application was made to the Sun Life; that was four or five days afterwards, I should say. As to the conversation that occurred between myself and Mr. Salgue at that time in reference to this insurance, I told him that under Dr. Little's statement in regard to him, I did not think he could get a policy with the Penn Mutual, and that I would hold his examination up, and would not make a record of it, and if he could pay the doctor's fee to the Penn Mutual—because that is customary entirely with agents to stop examinations that way—I would pay his fee, and he could answer in the future that he had never been rejected
2 by any company. Yes, sir; he paid me the five dollars, and I paid it to Dr. Little. I don't know what became of the application itself; it was a past matter with me, and I never kept record of that sort of thing. No, sir; I haven't got it.

Cross-examination.

By Mr. WIMBERLY:

Yes, sir; I wrote this in the letter to the agent of the Sun Life, and explained the facts to him. Yes, sir; he understood that Dr. Little would not pass him, by my turning it over to him. As to the

Sun Life issuing him two policies after I turned him over to them, the way that arose, the application was made for three thousand dollars; I saw it when Nowell brought it back; well, as he had made application to *be* for six thousand, I knew that six thousand could be delivered to him, so I just told him to order out three thousand more. Yes, sir; introduced Mr. Nowell. Yes, sir; in that way the Sun Life issued six thousand dollars. As to whether that was more than Mr. Salgue wanted, and he never took some of those policies; in the one I showed him, which was a very cheap form, he wanted six thousand, but when a higher priced form was shown him that the Sun Life took his application for, he only wanted three thousand of it. I don't know how long it was after the Sun Life issued this policy, before he took out the second policy. No, sir; it wasn't some months; it was just a few days—that is, the first policy; I only know about the first policy. Yes, sir; I stated to him that I would withdraw the application to the Penn Mutual before it reached the Company, and then he could truthfully state that he had not been rejected by any other Company. As to whether I explained that to him, I don't know that I went into it at length, but that was the substance of it, that he could withdraw the application, as he had the right to do, before it went on to the Company, and he could state he had not been rejected. Yes, sir; I am an insurance agent. We had this particular conversation at the Bibb Brick Company, when I went to get Dr. Little's fee. I had been an insurance agent, writing insurance about eight or nine years. As to whether I have been very active in that time, writing a good deal of insurance, I was doing more then than now. No; I have not written a good deal of insurance, but a fair amount in the last few years. Yes, sir; I have represented a number of companies at various times. Yes, sir;

73 it is a usual thing with agents, when a man is not reported on favorably, to advise him to withdraw his application, and not make a report to the Company. No, sir; I was not present when Mr. B. H. Ray tried to get Mr. Salgue to accept the Aetna policy. I knew of Mr. Ray going out there to try to get him to accept it, just as I knew that the other agents were after him in regard to their policies. I never saw Mr. Ray there. Yes, sir; I knew that Mr. Salgue wanted some insurance, from my conversation with Mr. Salgue when he went to pay me the fee, and then afterwards when I went out with the agent of the Sun Life to deliver the policy. Yes; I know when we went out there, we had difficulty to get him to take the insurance, because he had been overburdened with insurance. As to whether he wrote the application to the Penn Mutual the first time, or I went out there several times, I got that right away. The Sun Life agent made two or three visits before he wrote his application. As to it being generally known during that time that he had applied for insurance, I could only judge so from what I came across; the Sun Life agent went out there several times to deliver this policy, and could not do it. He couldn't deliver it because he would not take it, for some reason or other. I only know that from what this agent would tell me when he would come back from there. He would tell me he was going to deliver the

policy, and then he would come back and say Salgue would not take it. As to what Mr. Nowell did report when he came back, as I remember it, there was some objection as to the age. I am not perfectly clear on that, but there was some objection. The policy, I think, was written at the age of forty-one, as well as I can remember, and there was some mis-statement as to his age, and what he was entitled to from the date of his birth; he was entitled to the age of forty, instead of forty-one. A policy of that age was given. In the meantime, he had the age corrected, but I forget now how that was passed over. Yes, sir; one objection in the Sun policy was, he was entitled to it a little cheaper than on that policy. Later, I went out to see him with Mr. Nowell. I made three or four trips to deliver the Sun Life policy. As to what Mr. Salgue said about this matter when I went in person about it, he liked another policy that had come out with the Provident Savings, better than the policy with the Sun Life. I explained the difference to him after several trips; I persuaded him that the Sun Life policy was a better policy. Yes, sir; when I went in person with Nowell, I found some reluctance to take the policy for this reason; he had made application for several different policies, agreeing to take one; he did not
74 care for but six thousand or a small amount, and he wanted to take the one that he liked the best; when I got there with the Sun Life, he liked the Provident Savings. I am testifying from my own knowledge, in this way: When I tried to deliver this policy, he told me that these policies were ordered out under that condition, and he had to wait until the different policies were ordered out, until he could tell definitely what he would do. There was a special plan of the Provident Savings, known as a twenty-year saving policy, with a half return premium. I persuaded him that the policy with the Sun Life, being what we call a non-participating policy, was a better contract as for six thousand, than the Provident Savings for five; the next time he ordered out another policy from the Provident Savings, the agent had ordered it out trying to get something like the one I had. As to whether I did, during those different visits, persuade him to take the Sun Life policy, I did not get delivery then. Yes, sir; I tried to persuade him, because when I saw he would not take the Provident Savings, and would take the Sun Life in preference, he hesitated, because he had a policy coming to him from the Aetna, that was his idea, to take the one he liked best of these; in other words, he applied for more insurance than he wanted to take because he wanted to see others before he was willing to commit himself. When I went to collect the fee from him, it was mentioned he had made application to some other company. I forget what company it was. I told him that it would be better for him to have applications pending with different companies, then possibly, if he could happen to be rejected in any other company it would be as explained to him. It was just the insurance company's nature to be largely in a hurry to issue insurance, if they knew it was pending another company, and would just take a man on his own risk. Yes; I wanted to make the insurance companies anxious by a good large amount, and let them judge him on his risk just as it appeared

to them. I made three or four trips before I got him fairly persuaded to take the Sun Life policy. Yes, sir; I know of a difficulty growing out of the fact of his having signed a note for a policy, and they wouldn't give him the note back, as I said just now. When the Provident Savings Company was disposed of, I wanted to know what kind of policy would be taken by the Aetna. Yes, sir; I had persuaded him not to take the Provident Savings, but to take the Sun Life. Yes, sir; he did take the Sun Life, and declined to take the Provident Life. As to the Aetna Life, it came about this
75 way: I wanted to find out what sort of a policy the Aetna was issuing; Mr. Salgue did not know, and he said possibly it was on a memorandum they gave him when they took his application; I asked him if they gave him some memorandum when they took his policy; he said yes. I said: "Well, then, you have settled for the Aetna policy." I mean by that, he had givevn a note, and they had given him a binding receipt. As to what he did when he learned that, he didn't understand it, and he was rather mad about it; he thought that policy was coming out under the same conditions as the other policies. As to what Mr. Salgue said, he told me that he understood the policy was to come out and he was to accept it or not, as he saw fit, but the binding receipt said otherwise, and he was mad, I know he was mad. Yes, sir; I saw that he was mad. Yes, sir; that was the first time he learned it, when I explained it to him.

Redirect examination.

By Judge MILLER:

As to whether Mr. Nowell was the Sun Life agent, he didn't hold the General Agent's contract here; Mr. Holland was the agent in the adjoining office to me. Yes, sir; Mr. Nowell was writing insurance for the Sun Life. No; I was not undertaking to write for the Sun Life in that particular instance; I just turned the matter over to him, and told him to write this policy, he could if he wished, and give me one-half of his commission. Yes; I got one-half commission. Yes, sir; I went out there those three or four times seeking to finally land that insurance. Yes, sir; the real contest during the first interviews was between the Sun Life and the Provident; the Provident's agent's policy was the first one that came. In that way, I came across it. As to whether I finally persuaded Salgue that the Sun Life policy was better than the Provident, later he took three thousand of each; I could not deliver him the whole six. As to whether I afterwards insured him for six, I only delivered him three thousand; I understand three thousand was delivered to him later. I don't know, no. The particular time I was talking to Salgue about the Aetna matter, was on about the third or fourth trip of mine there for the delivery of the Sun Life policy. Yes; I think the fourth trip was the last one. Yes, sir; Salgue just said he had a memorandum, that the agents of the Aetna had given him; he spoke of it as a memorandum of some sort. Yes, sir; he showed it to me. No, sir; I haven't got that paper; I haven't seen it since. Yes; as I remember, it was a binding receipt giving
76 a receipt for a note that was given in settlement of a premium on the policy, as I remember it, putting the insurance in

force from the date of his application, or from the date of his acceptance with the company; I don't remember how the receipt read. Yes, sir; it was provided the company finally accepted the risk.

Dr. WILLIAM J. LITTLE, sworn for the defendants, testified as follows:

Direct examination.

By Mr. BLACK:

My name is William J. Little. Yes, sir; I live in Macon. I graduated in Medicine in 1894. Yes, sir; I was the Penn Mutual examiner in Macon in June, 1905. Yes, sir; I recall the circumstances of Mr. Salgue coming to my office, or being brought to my office, in reference to an examination to be made by me for the Penn Mutual Insurance Company. As to what happened, Salgue appeared at my office for the purpose of being examined in the Penn Mutual; I asked him a certain number of questions that are found on the blank, and noted his robustness and apparent good health; and on making what is known as the physical examination, which comprises a part of the examination of an applicant, I noticed that his heart was acting in a tumultuous manner, that is, in its pulsations, showed what would be termed as heaving up and down, might be termed heaving heart. It showed that it was a little to the right of the normal position, a position that is under the nipple, which would indicate an enlarged heart. I then listened to the sounds of the heart, and heard the sounds differing from those in health, that is, a murmur, which showed more clearly at the apex of the heart. That is about this way (indicating) counting from the heart side. And it was transmitted back and through under the shoulder blade. This sounded here more distinctly at the apex of the heart, and transmitted through the chest to the shoulder blade, or scapula, as it is called, would indicate a disease of the heart known as a mitral murmur. On discovering this sound, I was satisfied that I would not pass Mr. Salgue, and I told him that I found some trouble that would probably prevent his getting insurance. I asked him who his doctor was. He told me that Dr. McAfee was his physician, and wanted to know of me what his trouble was. I was not examining him for the purpose of
77 treating him or prescribing, and I ascertained his physician, who attended him. I found his heart affected, and directed him to Dr. McAfee. I saw Mr. Clark, who was the representative of the Penn Mutual, and in this particular company my duty was to report to him, to the agent giving me the application, as to what I found. I informed him I could not pass him. Mr. Clark showed a good deal of feeling about the matter when I told him I would not pass him. He asked me if I would see the man again. I told him I would not object to examining him again, but told him his condition was that of heart trouble, and it was no use. My impression is, the man came. As to what was the matter with Mr. Salgue's heart, he had an organic enlargement of the mitral valve of the heart, with, at the time I saw him, what is known as

a compensatory hypertrophy, that is, the heart was enlarged, the muscles were strengthened and enlarged by reason of the extra work put upon it to overcome this extra work in the valve. This enlargement is what we term hypertrophy, in order to overcome the deficiency in the valve. At the time, there were no heart symptoms that the applicant was aware of, which he showed. There was talk of a second visit; in that, I am not absolutely clear whether he came back a second time, or not. Yes, sir; it was my duty to report back to Mr. Clark, as Agent, the result of the examination. Chronic acid gastritis is a condition of the stomach in which there is an increased amount of acids poured out into the stomach, due either to a generation of hydrochloride acid itself, or it may be an acid condition due to fermentation of food products in the process of digestion. As to whether the amount of blood that goes to the stomach has anything to do with stomach trouble of that character, stomach trouble of that character would be due more largely, at the stage I saw him, in my opinion, to the affection of the stomach, rather than the blood supply. The nervous system would control it more than the blood supply. As to whether this mitral murmur is more pronounced at certain days or certain times of the day or night, literature states that there are times when mitral murmur disappears and cannot be seen; it is taught in medicine that sometimes a mitral murmur is not heard is not caught. As to whether a mitral murmur is more or less distinct after labor, or after a period of rest the heart sounds are more distinct after exertion; they are clearer and the heart is made to act with more vigor and strength, which accentuates the sounds that the heart makes in performing its functions.

78 As to the condition of a man's health who has mitral murmur, his health may be, if he has what is known as thorough compensation, relatively good, as we would speak of it, perfect, so far as outside observation goes. At the time I examined him, I considered Mr. Salgue in perfect health until after I made an examination of him. After I examined him, I considered that he had an anatomical defect. That is relatively serious illness. A man may have a mitral murmur and go through life and reach his expectancy. On the other hand, an accident may occur to the valve which is affected, the little artery that acts as a guide in its support may break, or something may occur about that valve that is affected; he may lose compensation and dilitation occur which would cause loss of health and even death.

Dr. W. J. LITTLE, recalled, testified as follows:

Cross-examination.

By Mr. WIMBERLY:

It was in the month of June that I examined Mr. Salgue; the exact date I could not give. Mr. Anderson Clark brought the application. No, sir; I did not send the examination to the company after I had made it. As to whether I made a report or whether it was withdrawn from my hands, I made a report to Mr. Clark that I would not pass him. Yes, sir; they withdrew the report. As to

whether I ever made a written report, I never finished out the examination papers at all. Yes, sir; Mr. Clark, who put it into my hands, withdrew it from my hands. As to whether, so far as I know, there was no rejection by the company, I suppose the company rejected him when I made my report to Mr. Clark. I did what I was instructed to do; I reported to Mr. Clark; that was the end of it to me. Of course, when I report, the company does the accepting or rejecting. When I make my report, unless it is withdrawn from my hands, the home office passes on it. Yes, sir; they do the accepting or rejecting. Yes, sir; when I examined him there was an enlarged heart. I detected that by a physical examination, by knowing the position of the heart in its normal state, and seeing the relative position in this man's chest, and by being acquainted with the normal heart action, and by hearing the difference in that man's heart. Yes, sir; I detected it through the physical objective symptoms by which I can detect an enlarged heart. Yes, sir; that is a per-
79 manent condition. Yes, sir; any examination that was carefully made by a physician ought to detect that enlarged heart. Yes, sir; it is a thing that is discoverable by a physician. As to whether it is a thing the patient himself would know anything about, he might not know anything about it if it gave no symptoms. As to whether there was anything to indicate it was painful or that the patient himself would know, the examination of this man, up to the point of my discovery of the heart lesion was negative, so far as he was concerned. No, sir; there was nothing to indicate that he would know that he was a diseased man, so far as I could determine. As to whether he appeared to be a very healthy man, he was vigorous, strong, and muscular, and apparently a good risk. As to whether any one other than a physician would regard him as a man unusually healthy and vigorous just to look at him, he would be looked upon on the street as probably above the average of health. As to whether I told him he had heart disease, I told him his heart was affected; I ascertained his physician and directed him to his doctor to let him know what his trouble was. No, sir; I did not go to the doctor myself; I directed him to his physician. Yes, sir; I know Dr. Harold and Dr. Barron and Dr. Gostin and Dr. Winchester. They are reputable physicians in Macon. As to whether I noticed any symptoms of trouble, except this enlarged heart and the symptoms I testified to referring to the heart, the symptoms I noticed were entirely physical; I mean they were not symptoms, they were signs. Yes, sir; they were the signs I detailed yesterday. No, sir; I noticed no other disease or trouble than that.

By Judge MILLER:

Yes, sir I informed Salgue that I could not pass him, that his heart was affected; that was about the language I used. Yes, sir; I told him I could not pass him for insurance on that account. Yes, sir; after I satisfied myself of the condition of his heart, I stopped the examination at that point.

By Mr. WIMBERLY:

I reported the result to Mr. Clark, who was the agent for that purpose. Yes, sir; he withdrew the papers from my hands.

By the COURT:

As to whether I went into any examination of the general effect of this disease or this defect in the heart action or organic
80 condition of the applicant, to the applicant, I was acting in the capacity of insurance examiner, and as such, I did nothing further than to tell him his heart was affected, and to recommend to him that he consult his family physician. No, sir; I did not give him any details as to the disease further than simply to tell him his heart was affected.

Dr. J. C. MCAFEE, sworn for the defendants, testified as follows:

Direct examination.

By Mr. BLACK:

My name is J. C. McAfee. Yes, sir; I live in Macon. I have been practicing medicine eleven years. Yes, sir; I recall that in June, 1905, or early in July, 1905, Mr. John A. Salgue came to me in reference to trouble that he might have. As to what occurred between Mr. Salgue and myself at that time, he came into my office and said that he had just been told by Dr. Little that he had trouble with his heart, and that Dr. Little had told him to come and see me about it, and he was there for the purpose of finding out whether or not it was true. Yes, sir; I made an examination of him at the time. I found that he had an organic heart disease, a disease of a valve [of] his heart called the mitral valve, and that his heart was doing good work at that time, that the enlargement or thickening of the heart muscle was sufficient to overcome the defect at that time. Yes, sir; I did discover a mitral murmur. Yes, sir! I had been Mr. Salgue's physician prior to that time for several months. Yes sir; I have a record of the times of my treatment of him. Yes, sir; I have it with me. As to when I treated him and what I treated him for, I have here my daily note book (referring to memorandum); I kept a record of my work at that time. Mr. Salgue was at my office on the following days: January 5, 1905; January 9, 10, 11, 13, 15, 17, 1905, and I went to his house on the 20th of January, 1905. I also went to his house on the 22nd of January, 1905. And he was at my office on March 29, 30, 31; April 1, 3, 5, 7, 10, 12, 14, 16, 1905, on April 18, 20, 22, 24, 26, 28, 1905; on May 2, 4, 8, 9, 11, 13, 15, 17, 19, 21, 24, 25, 29; and on June 1, 5, 7, 13 and 15, 1905; and on July 1, 3 and 13, 1905. Yes, sir; those were professional visits. I was treating him for stomach trouble he had. The stomach trouble was
81 what we call a chronic gastritis. As to whether that is a form of dyspepsia or not, dyspepsia means difficult or painful digestion; that is the meaning of the word. Yes, sir; dyspepsia embraces this. During that perior I gave him medicines, washed out his stomach from time to time, and used electricity on him. As to whether that treatment modified or aggravated the symptons in his particular case, he improved sufficiently to stick to me for that length of time. The liquid with which I washed out his stomach was water and mild solutions of bicarbonite of soda and mild seline solutions. As to

what part I applied the electricity to, I applied one part of the current to the spinal column back of his neck, and the other part over his stomach; and I used an extra electrol, one that is put down into the stomach. No, sir; I don't recall the day of the month that Mr. Salgue came to my office after leaving Dr. Little's office; it was in June, though, prior to the 19th of June. I know that because I went away from the city on the 19th of June, and did not come back until the last of July. I treated him for that heart trouble once; he was at my office on the 1st, 3rd and 13th of July; it was on one of those days, but I can't recall which one.

Questions by Judge MILLER:

Yes, sir; when he came to my office direct from Doctor Little's, that was some time prior to the 19th of June. Yes, sir; I took Mr. Salgue's statement for the fact that he had come to me direct from Little. He stated to me that Dr. Little had said he had trouble with his heart. Yes, sir; I thereupon examined him, made [it] a heart trouble. I did not strip him to the skin; I examined him through his shirt; my recollection is that I did not have him take off anything but his coat; I don't remember that he had an undershirt. He had a splendid appearance, physically. When I had completed the physical examination and found that he had an organic affection of the heart, my diagnosis of the condition was that it was what we call a mitral regurgitation of the heart. As to the normal course of that disease, a disease of the mitral valve is always said to be an inflammatory condition of that valve, and this very inflammation destroys a certain portion of the edge of the valve that makes it impossible for the valve to completely close the opening of the heart that that valve is intended to close. Then, on the contraction of the heart, when the valve attempts to close this opening, it comes up to the normal condition, but this edge of the valve being partially de-
82 stroyed, it again leaves this open. A certain amount of blood passes back to the upper chamber of the heart. This condition is usually overcome by an enlargement of the heart muscle, a thickening of the heart muscle that Nature brings about in order to correct as far as possible this condition. When that is done—it is a thing that takes place promptly—the patient is not aware that there is any trouble there, because Nature has corrected it for him. He will not be aware of it until he has either a recurrence of the original inflammatory condition in the valve—that comes first, does not suffer until that occurs again, and increases the defect to the extent that this enlargement is not able to correct. Then the patient gets tired easily, troubled with shortness of breath, has a certain amount of swelling, his feet, fingers and hand, sometimes in his hand, from the lack of force of the circulation to drive the blood through. This takes place as the repeated return of those conditions affects the valve of the heart. If he has no return of those conditions he may go for a lifetime, and never know he had the heart trouble. Another thing that tends to produce an aggravation of this trouble is physical exertion, physical straining in hard work, or running or anything that would call on him for very hard physical exercise. That would call

for vigorous circulation, that the heart being crippled, would be unable to cope with, and that oftentimes results in greater dilatation of the heart's cavity. This muscle being worked down, dilates, and that is usually the termination of the case. A beginning of dilatation is what we always call a beginning of the end of that patient; when he reaches the stage of dilatation that is the beginning of the end with him; dilatation is something we cannot overcome. Yes, sir; that is the usual course of the condition that I found him suffering from. Yes, sir; I have examined for life insurance. I have practiced medicine for eleven years. Yes, sir; all this has been in Macon. I have had considerable experience in examining for life insurance; I have been examining for life insurance companies for eight years, and have examined for a good many leading companies in that length of time. I have examined for a majority of them, I think, that have done business here. Yes, sir; I am familiar with the rules and requirements of examining for life insurance. No, sir; I did not tell Mr. Salgue that he was non-insurable; he did not ask me. No, sir; I could not recommend Mr. Salgue for insurance after my examination of him, on the occasion that he came to me from Dr. Little's office.

83 Dr. J. C. McAfee, sworn for the defendants, testified as follows:

Direct examination.

By Judge Miller:

Chronic gastritis of the stomach is a disease of the stomach. No, sir; I did not treat him for acute gastritis; it was chronic gastritis. As to the effect that has on a man's life, it is not a disease that has a fatal tendency; it is one that is very annoying to the patient almost daily, and sometimes hourly; he has pains or distress or unpleasant feelings in his stomach that keep him always annoyed and worried, and more or less incapacitated for his work. As to whether or not a man is a fit subject for insurance while suffering and still not cured and under treatment for chronic gastritis, I do not consider that it would disqualify the applicant for insurance. This stomach condition that he had, the kind of condition that Salgue had, is one in which the patient might be said to have had too much digestion; he had a sufficient amount of acid and other secretion in his stomach after each meal to digest that meal, and had a quantity left over; this gas was the thing that was bothering him; that was what burned his stomach and kept him constantly in discomfort. As to whether that would be cured by eating a little more, that is a very frequent remedy, but that does not stop the secretion; it stops it for the time, but it does not keep it from coming back after the next meal. I do not think that condition of his stomach had any connection at all with his heart trouble. When I treated him for heart trouble, was on one of the three last visits he made to my office; I cannot remember the exact one; it was possibly the 3rd or the 13th of July; I don't know which. As to how I came to treat him for heart trouble then,

he was having some trouble with it. The first time he came to see me, I found this heart trouble; I did not prescribe for him; his heart was doing its work perfectly, and he did not need any medicine, and I told him at that time that whenever in the future he did have certain symptoms to come on, that would require the assistance of medical remedies, to come back and let me treat him. He came back on those three days, and it was on one or the other of those dates I considered he needed medicine, and I prescribed for his heart, from his statement of the symptoms. As to what I would say was the trouble with his heart, he was getting tired a little too
84 quickly, he didn't have the lasting qualities, you might say, he could not hold out as well as he wanted to, and as well as he had been accustomed to, and suffering with shortness of breath on exertion. Yes, sir; the symptoms he described which led up to my treatment, were such as naturally resulted from his heart condition.

Cross-examination.

By Mr. WIMBERLY:

Yes, sir; at the time he came to me, I found a disease of the mitral valves. The mitral valve is the valve that closes the opening between the upper and lower chamber of the heart, whenever the heart undergoes a contraction the closing of it is to keep the blood flowing backward so that the impulse of the heart muscle contraction can be given to the blood current to send it forward. I did not find any symptoms indicating the presence of this disease, except that I could hear the backward flow of the blood on every contraction. No, sir; had no difficulty at all in hearing that. Yes, sir; I consider that any physician that examined him would have heard it, certainly at the time that I examined him. Yes, sir; the shortness of breathing that I spoke of and difficulty in getting tired, is always present in the last stages of heart trouble. Yes, sir; I think any competent physician ought to tell whether there is heart trouble or not, when it reaches that stage. If he makes an examination as he ought to make when he comes to the point where the application calls upon the physician to relate these symptoms, it would be inexcusable in a physician not to find it. As to whether gastritis being chronic or not depends very largely on how soon the man that treats it is successful, it usually has reference to the length of time, rather than to the severity of the disease. As to whether if a physician were to relieve the gastritis in a week, and another physician were to relieve the same gastritis in a year, in the first case we call it acute and in the other treatment we call it chronic; I don't know that I can say that. I will tell you what acute gastritis is, if you wish; it is a form of gastritis that usually follows on acute indigestion; it is a thing of short duration. Yes, sir; chronic just means that it has lasted some time. As to whether my method of treatment when I find chronic acid gastritis in a case of a man that has too much digestion, in order to weaken the digestion I pour a lot of water in his stomach, that is not the object; it is to tone up the stomach. As to whether that

was my treatment to fill him up with water, whether that is
85 what we call washing it out, I filled him up with water and let the water run out immediately. As to whether I swore that unless we weakened down the acid, he would have eaten himself up, he had too much digestion and unless he had more food the acids were likely to eat out his stomach, it wasn't so bad as that; it would burn him for a while until the stomach either passed it on into the bowels, or he would do it with drinking water. Water and electricity were the two things I used; I do not consider that the only thing. As to whether this washing out because of too much digestion is usual treatment or just certain members of the medical profession make a profession of the water treatment, I don't consider it water treatment; we simply wash out the stomach and it is one of the methods of stimulation to the stomach muscle; it is what is called a massage of the stomach muscles. Yes, sir; there are certain physicians who make a specialty of that particular method of treating gastritis; that is one of the methods they employ. Yes, sir; I belong to that school. That is what we call regular; the allopathic is the name; we claim the right to use anything and everything by which we can do the patient good. No, sir; it is not a fact that with very much of this washing out of a man's stomach he would get a little tired after his work and have a little shortness of breath; it only takes a minute or two to wash it out. As to whether in throwing a lot of water into a man's stomach, the stomach is weakened, Salgue would frequently talk to me while I was washing out his stomach, it disturbed him so little. The discharge comes back through the tube; the tube is passed into the stomach, and the water is thrown through the tube. Yes, sir; the tube goes through the mouth, and then it comes back through the mouth. No, sir; I did not keep up the electrical treatment all of those months for the gastritis; I used it from time to time. As to what I mean by from time to time, I can give you the dates on which I used it, if you like. I will state that the chronic acid gastritis is sometimes classed under another head, neurosis, that is, it seems to be due to a disturbed nervous affection of the stomach, that may also affect other functions of the body, and the use of the electricity is for two reasons, one is to correct this disturbed nervous condition, and another is by the use of another kind of electricity known as galvanic electricity, to actually destroy a certain number of these acid secreting spells, that is he galvanic current, and the statis current is used more to correct any depressed nervous condition which might be present.
86 As to whether he was a very nervous neurotic man, he was not what I considered a nervous man; he was anything but a phlegmatic individual; he was a man that was intent about anything that he was concerned in. As to whether he was a type of patient that while he appeared to have pretty good health, he needed electricity and water, one of the things that caused him to have this trouble with his stomach was his use of tobacco. As to whether I stopped the use of tobacco or let him swallow the tobacco and wash it out, it was not due to swallowing tobacco. As to whether he would talk to me while I was washing him out, I would not be absolute

about that, it is such a common condition. As to whether this very choice stuff was coming back through his mouth while we were talking, it was just some secretion that was left after that; there was no food; it was a liquid; the water coming back would be acid. Yes, sir; when food is dissolved it is a liquid, too. As to what sort of intelligence a tube has that enables it to distinguish between gases that are acid and bring the gases back without bringing the digested food back, it has no intelligence at all. As to whether it all comes back together whenever there is any food in his stomach, it comes back if the particles are not too large for the tube. No, sir; during January, during these treatments, I did not prescribe that he could not take any food into his stomach. As to why he had to be treated oftener during the months of April and May than earlier, whether there was anything peculiar about my treatment that made him come back oftener the longer he took it, on January 20th, he got sick with the grippe, he was at home, and I made two trips to the house. From January 20th and 22nd to April 1st, he was not having much trouble. Yes, sir; when he started back to me in March, then his visits got frequent. Yes, sir; from January 5th to January 22nd, I treated him and then he got sick. No, sir; my treatment of him during January, didn't have anything to do with his getting sick. As to whether all this washing out of the stomach and the enfeeblement it leaves, very often leads to either grippe or pneumonia, it don't enfeeble the patient to wash him out. Yes, sir; when he got down with the grippe, I attended him for the grippe. Yes, sir; the two trips I was at the house were for grippe. As to whether, after he got well of the grippe, he had any heart trouble, he was lying around then for a while, staying about home; he was getting better, and he took a severe cold down there
87 on a cold, wet day. As to whether, during that time, he had another physician, whether he had Doctor Ross for this bilious attack, I did not know it; I saw him on January 22nd, on January 22nd I visited him at his house; then on January 26th a date that I did not call out a while ago, he was at my office and I prescribed for him on that day. No, sir; I did not wash his stomach out when he left in July. As to whether he had any stomach trouble, so far as I know, after July to his death, I don't remember to have seen him any more in a professional way. Yes, sir; when I last saw him he was still suffering more or less from his stomach. As to whether during all the time I gave him this electrical treatment, I ever found any heart trouble until Salgue called it to my attention, I did not suspect any and did not examine him for it. Yes, sir; if a person has heart trouble, sometimes it has something to do with this neurosis I spoke of. As to whether I would consider Salgue a neurotic patient I did not say he had neurosis; I said chronic acid gastritis was sometimes classed as neurosis. Yes, sir, Salgue came to me himself and told me Dr. Little had seen him and sent him there. No, sir; I had not seen Doctor Little. No, sir; I never did see Doctor Little about that. Yes, sir; Salgue came himself.

Redirect examination.

By Judge MILLER:

Yes, sir; upon the day Mr. Salgue came from Dr. Little's office to me, and told me Little said his heart was affected, I immediately examined his heart. As to whether I told him, after I had completed the examination, that he had a serious heart affection, I told him that his heart was wrong; I told him what the trouble was.

By Mr. WIMBERLY:

I told him the trouble was he had a disease of the mitral valve. No, sir; that was not all I told him; I gave him directions what he ought to do, and what he ought not to do. I did not prescribe anything, except to give him some advice as to how to conduct himself. When I prescribed for him in July, I prescribed a combination of drugs, but the two active drugs were digitalis and strophanthus. Strophanthus is a heart stimulant. Digitalis is also a heart stimulant, strengthens the contraction of the heart. The effect of strychnine is to stimulate the activity of the heart muscle.

88 Dr. JAMES T. ROSS, sworn for the defendants, testified as follows:

Direct examination.

By Mr. BLACK:

I live in Macon. Yes, sir; I knew Mr. J. A. Salgue. I treated him on one or two occasions. Yes, sir; I am a physician; I have been practicing since April 2nd, 1885. As to when I treated Mr. Salgue, I don't remember the dates; it seems to be it was the latter part of 1904, or the early part of 1905, I treated him on one occasion. As to what I treated him for I think he had had a severe chill, and his liver was torpid and his bowels constipated. Yes, sir; that is what you might describe as bilious fever. That was in the latter part of 1904 or the early part of 1905, I think. Yes, sir; he consulted with me again. As to when that was I don't remember the dates. As to whether it was shortly after this time I treated him or before that time, the first time I remember to have treated him at all. I didn't treat him then; the next time he consulted me, must have been very shortly after he had been examined for life insurance by Dr. Little and seen by Dr. McAfee. The only thing that makes me refer to that as the time, soon after that examination had been made, was because he stated to me that he had been examined for life insurance, and the physician had said he would not pass him because he had a heart trouble, and he wanted me to listen at his heart, and tell him whether I thought, after listening to it, that I, myself, would be willing to examine him with others and give him a testimonial as to the fact that his heart was all right, and that he would be entitled to life insurance. I examined him; I did not strip him, because when I put my ear on his chest I could without any trouble detect that he had a heart trouble, and in my opinion it was a mitral regurgitant murmur, and I stated to him while I was sorry to have to say it to

him, that in my opinion the doctor had acted correctly in saying he would not pass him for life insurance.

Cross-examination.

By Mr. WIMBERLY:

As to whether he told me who the physician was, I think he mentioned both names, Little and McAfee. No, sir; I have no
89 independent way of fixing it, other than that the doctor would not pass him for life insurance, and he wanted me to examine him. As to whether he told me that Dr. Little had examined him and said he had heart trouble, and Dr. Winchester had examined him and said he did not have it, I don't remember that he mentioned Dr. Winchester in the case, at all; I won't swear he did not; I don't recollect it at all. As to whether I remember his mentioning Dr. McAfee, I think he mentioned both of those names, that he had been examined for life insurance; he didn't say whether both examined him for life insurance or not, but both told him he had heart trouble. No, sir; I cannot fix the date when I examined him, except, as I say, it must have been very near the time the examination was made, because he referred to the fact that these men had just said he was not a fit subject for life insurance. No, sir; I made no record. No, sir; I was not afterwards paid my bill for it. No; Mr. Moore did not pay me for it; he paid me for another service later on; I don't know whether the visits were made to Salgue or to one of his children, I think in the August following, in that same year. No, sir; that August bill that I charged him for, was not for this examination of him; I made no charge for telling him what I did. Yes, sir; I think any doctor who examined his heart could have discovered the symptoms I found; I detected it through his shirt. Yes, sir; I think any ordinary examination would have disclosed it, at that time, when I examined him.

Dr. H. MCHATTON, sworn for the defendants, testified as follows:

Direct examination.

By Mr. BLACK:

I am a physician, and have been about twenty-six or seven years. I examined John A. Salgue for insurance for the Volunteer State Life of Chattanooga, in 1905; I think it was in July. Yes, sir; this is the medical examination I made at that time; that is my writing, my signature. Yes, sir; I asked Mr. Salgue those questions. I wrote the answers he gave me, recorded at the time. I asked him the question: "Have you ever been repected or postponed by any life insurance company, assessment society or benevolent order?" His answer was "No." I asked him question 22: "How long since
90 you were attended by a physician or professionaly consulted one? The answer he gave was: "Three months ago, bad cold, three or four days, Dr. Ross, Macon Ga." Yes, sir; I asked him question 28, which contains the words "palpitation of the heart." His answer was "No." The first part of that

question is: Have you now or have you ever had any of the following diseases?" and there is a list in which is included "palpitation of the heart." No, sir; palpitation of the heart is not the same as a mitral murmur; palpitation is usually a nervous condition. Yes, sir; in examining Mr. Salgue, I discovered trouble with his heart; my recollection is I discovered an enlarged heart, with a mitral murmur. That is my recollection; it is on the application there whatever I found. What I stated on the application at the time was: "The applicant has a mitral regurgitant murmur, first sound not strong, apex about an inch below the normal line and displaced to left." I suppose I have been examiner for various insurance companies for twenty-five years, possibly twenty-six. The whole question on which I made recommendation was as follows: "Where was this application made? At my office. Is the applicant free from any physical or mental defects? Cardian disease. Is the risk first-class, average or poor? Poor." Then the remarks: "Remarks: applicant has a mitral regurgitant murmur, first sound not strong, apex about an inch below the normal line and displaced to left."

By Judge MILLER:

Yes, sir; I treated Mr. Salgue subsequent to the date of this examination. I have a memorandum of the dates in my pocket, taken from my books; I saw him on the 13th of July, 1905; I saw him on the 2nd of March, 1906, the 3rd, the 20th and the 30th; April 13th and 15th, 1906. I don't know when he died. As to whether in those subsequent interviews with him, my original opinion of the man's condition was confirmed, when I saw him, the last series of visits that I made him, his condition was exactly what you would have expected, taking into consideration his condition at the time of the examination. That was the progressive course of the disease, the continuance of the original organic disease. As to whether if he died on May 22nd, was found dead lying on a railroad seat on the train or sitting on a seat that would have been the natural course, that would be one of the natural terminations of his type of condition. They very often, in that condition, after they get to that point, die suddenly. Certainly, if he died in that manner either sitting at home or on a train, without a struggle, that
91 confirms my opinion of the existence of the disease on July 13th, 1905. No, sir; there was not, in any one of those subsequent visits, anything to indicate that I was mistaken; I just went on and treated him for his increased heart weakness. No sir; I did not advise his employers at any time before this insurance was taken out that he was liable to die at any time; I saw one of his employers some time after the insurance, I cannot state how long afterwards, and I told him, so far as his usefulness was concerned, the man's days were over. I can't say how long that was after the examination; I think it was a considerable time. As to whether that is about the exact language, my impression is he came to see me about the man, and said he was a valuable man in his business, and he would be hard to replace, and my impression is I told him the man's

days of usefulness were over, that he might sit around and direct his work for a certain length of time, but he could not do any more physical work. That is my impression of the conversation.

Cross-examination.

By Mr. WIMBERLY:

My recollection is that was some time after the examination at my office, possibly after I saw him the second time. Yes, sir; I saw him the second time in March, 1906; it may have been after that; I don't know exactly when it was. No, sir; the symptoms I found him suffering with on July 13th did not require any treatment. On July 13th his cardiac condition was not bothering him, and he had no reason to know it existed from his own feelings, and when I heard his heart performing its duty, we do not give any medicine, because nature is taking care of it. No, sir; on July 13th the heart trouble had not progressed so far that he, himself, would know anything about it; there was no reason why he should know anything about it. No, sir; I did not tell him anything about it. As to whether at that time, to all appearances, to a layman he had every appearance of a very vigorous, robust man, he was an unusually robust looking man. As to whether he had the appearance of being such a man as had no such stage of heart trouble as would affect his muscles or his strength or his ability to labor, I did not see why it should give him any trouble at all. As to whether there was, as late as July 13th, 1905, any need to treat him with digitalis
92 or strophanthus, I should not have so treated him at the time. As to when was the first time I ever saw him that he had such a serious heart trouble as to call for the treatment of digitalis and strophanthus, I never saw him professionally between July 13, 1905, and March 2, 1906; at that time his heart was giving him trouble. Yes, sir; that was the first time I saw him professionally when his heart was giving him trouble. No, sir; there wasn't any trouble with his health, other than this heart trouble that I discovered, either in March, 1906, or in July. As to whether the displacement of the apex of the heart about an inch below the normal line, and also the displacement to the left, were things that could be discovered by an examination, I discovered them that way. Yes, sir; that was the only way they could be discovered. No, sir; that was not a thing the patient would know. Yes, sir; any doctor who examined him with sufficient care should have discovered it; that part of it was not changeable; the murmurs are not changeable, but the displacement and enlargement are not changeable. Yes, sir; any doctor who may have examined him ought to have found the displacement of the apex.

By Judge MILLER:

As to whether it is possible that along in that period, say in the month of June or July, when all of these examinations were had, a different physician might have examined this man and not discovered the heart murmur, it is possible that during that period he

could have been examined and not had the murmur, but the other part was permanent. The murmur sometimes disappears and returns; that was the least part of it; the enlargement of the heart was more important than the murmur. No, sir; when I examined Mr. Salgue for the Volunteer Life, and rejected him, I did not tell him anything about the condition of his heart; I did not tell him I had rejected him. Sometimes we reject or do not recommend a man, and the Medical Director does not see fit to take that recommendation, so we never know until a policy returns, whether it is accepted or not.

93 GEORGE COLLIER, sworn for the defendants, testified as follows:

Direct examination.

By Judge MILLER:

In July, 1905, I represented the Volunteer State Life Insurance Company, of Chattanooga, Tenn. Yes, sir; that is a Tennessee Company. Yes, sir; I was residing then in Macon, and doing business here. Yes, sir; I wrote out the application for Mr. Salgue. Mr. Salgue signed this paper, that is attached to these interrogatories, and I witness it; that is my signature as witness. Yes, sir; that looks like the original paper. Yes, sir; in making out this paper I asked him the questions. I think I asked him Question No. *b*: "Has any company or association ever declined to grant insurance on your life, or issued you a policy of a different kind or for a sum less than that applied for, or has any physician ever expressed a doubt as to your insurability?" I think I read the full question, but ordinarily I asked: "Has any association ever declined you?" I wrote that answer, "No;" I wrote it as he answered it. I think I read the full question to him; I don't know, but ordinarily we just say if any company has ever declined you. As to how long I had been in that business, my contract with the Volunteer State Life commenced on the first of June, 1905; I came here on the 4th of July, and I went to work on the 5th of July, soliciting insurance. No, sir; that was not my first case; I had taken one or two applications before. As to how I came to get Salgue, I was in the office of the Bibb Brick Company, and Mr. Joe Neel was in there, and he introduced me to Mr. Salgue, and told Mr. Salgue: "George is in the insurance business, and he is a great friend of all of us in here, and if you can give him any insurance, we would appreciate it." I had never heard of Mr. Salgue until that time; I didn't know anything about him. I solicited Mr. Salgue and he said that he thought he had as much insurance as he could take or had ability for, and Mr. Neel then said to him: "If you will give Mr. Collier an application, take his policy instead of some of the others you have got an application for;" and I then went out to see Mr. Salgue, and he consented to give me a policy upon the ground of friendship with these other people he was mixed up with himself, at Mr. Neel's particular request. Yes, sir; after I had completed making out

his answers. I sent him to Dr. McHatton; Dr. McHatton
94 was the examiner for our company, and I sent him to Dr. McHatton, gave him Dr. McHatton's office hours, and he went there and was examined; I did not go with him. As to the result of that transaction, I got notice from the company, my application and the medical examination are separate, not one and the same paper, as is the custom with some companies, and the first time I knew anything about it, I got notice from the home office, Mr. Salgue had been declined insurance.

By Mr. BLACK:

Question B reads: "Is an application for insurance on your life pending at this time in any other company? If so, give the name of the company?" The answer that he gave me was: "The Prudential and the Aetna." I mean, those were the ones I wrote down; that was all I wrote. I sometimes say, when they give me two companies, I say that is sufficient. Whether he answered any more or not I don't know, but he gave me those two. I don't recall whether he gave me any more or not.

Cross-examination.

By Mr. WIMBERLY:

Yes, sir; in taking this down, we do not always read the full question, we just give the substance of it to him and try to get a substantially correct answer. Yes, sir; that question has any company or association ever declined to grant insurance on your life or has any physician ever expressed a doubt as to your insurability, I have frequently asked whether they had been declined. No, sir; in this particular instance, I do not know whether I asked any more than that or not. As to whether I may have said two was enough iin regard to applications pending, that is all I recall he said, Prudential and Aetna, and I put them down; if he mentioned any others, I don't recall it at all. Yes, sir; before I went to write it at all he said he had all the insurance he wanted and it was suggested as a matter of favor to me, or favor to Mr. Neel, who was one of his employers, that he could take mine instead of some other, and on that understanding he agreed to make the application to my company. As to whether I remember what I said to the insured, and what the insured said to me as to rejections, I didn't know anything about any rejections; the first rejection I knew anything about was my
own company. As to rejections I do not remember at this
95 time, whether I read the whole question to him but I usually do not. As to whether when I asked the question and the witness made an explanation, then I would interpret for myself whether that was a rejection, and write the answer there was nothing said whatever in Mr. Salgue's answer to cause me to believe that he had been rejected. As to what that "January 13, 1905," following "July 13, 1905," means, I guess that is a clerical error on my part, intending to write July 13th. Yes, sir; it was actually made on July 13th.

Dr. H. P. DERRY, sworn for the defendants, testified as follows:

Direct examination.

By Mr. BLACK:

My name is H. P. Derry. Yes, sir; I am a physician. I have been a physician since 1888. No, sir; I did not have occasion at any time to examine Mr. Salgue; I listened at his chest. I was with no other physician at that time. I was in the office with Dr. McHatton. As to whether it was at the time Dr. McHatton was examining Mr. Salgue that I listened at his chest or prior to that time, McHatton was treating him at the time. I have no idea as to the dates when that was. As to what I discovered at that time I listened to his chest, that listening was of very short duration; I did not give him a very thorough examination; I knew the man had cardiac trouble, and I just wanted to listen to it; that was all and I listened sufficient to see that he did have a cardiac murmur; that was the extent of my examination. By a cardiac murmur I mean that he had a sound there which was not normal, was not the normal heart sound. That indicated a trouble with the heart; as to what kind of trouble, in this particular instance, it indicated a valvular trouble of the heart.

Cross-examination.

By Mr. WIMBERLY:

No, sir; I do not recall the time, further than it was at the time Dr. McHatton had the case under treatment. No; I do not remember whether it was in March or April, 1906, if he testified he had the case under treatment during those months; I could not say as to the dates. Yes, sir; I listened because I was there, and I knew he was under Dr. McHatton's treatment for this particular trouble. No, sir; it wasn't that I wanted to familiarize myself with the sound; the man came in there looking for McHatton, and wanted to find out whether he should have a prescription refilled, one Dr. McHatton had filled. I knew Dr. McHatton intended for him to have it refilled, and I told him so. The other part, I just listened just to listen to it, and that was all. I only listened for a short time, not much longer than a half second or a second. I did not make a complete examination. As to whether I knew he had cardiac trouble, because I heard Dr. McHatton discuss it, I knew it before I put my ear to him at all. Yes, sir; I knew Dr. McHatton had been treating him for heart trouble. No, sir; I did not see the prescription; he did not bring it with him. If a man were treating another as family physician for several months, say from the 5th of January to the 13th of July, during which time there were consultations of twenty or thirty times for supposed gastritis or stomach trouble, I should think it would be his duty to examine for every cause which might produce gastritis. Yes, sir; I should think that when a man comes in to see us, we would make a thorough examination to see what is the matter with him. As to whether, if a person has acid gastritis caused by the fact that his digestive

powers are too good, he digests too fast, the usual treatment is to wash out with water, and use electricity on them, I don't know that I would if his digestion is good. Well, no; I don't think, when a man has one of those vigorous stomachs that has overpowers of digestion, that is what is commonly called chronic acid gastritis. As to whether it is regarded by the medical profession that the treatment of that trouble is to wash the man's stomach out with water, bringing its contents back through his mouth, and put electripodes on his back and stomach, and run electricity through his stomach and put one down his threat, that may be one of the modes of treatment. As to whether that is the usual mode of treatment it may be with some physicians. As to whether it is with myself and Dr. McHatton and others I have noticed, I have never done it myself. As to whether I have ever known it done by Dr. McHattan or anybody I practiced with, I have not with McHatton and myself. Yes, sir; Dr. Charles Harrold, Dr. R. B. Barron, Dr. Gostin, Dr. Winchester and Dr. McHatton are all physicians of high standing here in Macon, as good as anybody.

97 Redirect examination.

By Mr. BLACK:

Yes, sir; I have heard of this water treatment, as it is called, for stomach troubles. It is used quite considerably; yes, sir. It is true that there is hardly any city that has not some physician that makes a specialty of stomach troubles that don't use that method of washing out stomachs. Yes, sir; that is a common treatment for stomach trouble. Yes, sir; I know Dr. McAfee. Yes, sir; he is a physician of standing in Macon. By "physician of standing," I mean that he has a good reputation. I mean of good standing.

For the defendant, The Prudential Insurance Company of America, Dr. JOSEPH W. JOHNSON testified by interrogatories as follows:

My name is Joseph W. Johnson; age, 31; residence, Chattanooga, Tennessee; Medical Director of the Volunteer State Life Insurance Company, Chattanooga, Tennessee, from November, 1903, to date. My duties are to pass upon all risks submitted to the company for insurance. John Anderson Salgue, of Macon, Georgia, in the month of July, 1905, made application for insurance in this company. He was examined by our examiner at Macon, Dr. N. McHatton. I passed upon both application and medical examination when it reached the home office of my company. He was rejected by my company upon the medical examination of Dr. McHatton.

(The defendant, Prudential Insurance Company, then introduced in evidence the application and medical examination of John A. Salgue to the Volunteer State Life Insurance Society, dated July 13, 1905. Said documents are as follows):

Exhibit A to my Deposition in Moore vs. Prudential Insurance Co., 10/10/08.

JOSEPH JOHNSON.

Application for Insurance in
The Volunteer State Life Insurance Company.
Home Office: Chattanooga, Tennessee.

Rejected 7/17/05. J. W. J.
Received Jul. 15, 1905.
Py. No. 273.

This application is the basis and a part of a proposed contract for insurance, subject to the charter of the company, and the laws of the State of Tennessee.

98 1. A. What is your full name? John Andrew Salgue.

B. Where do you reside? No. 1921, Street, So. 2d St.; City or Town, Macon; County, Bibb; State, Ga.

C. What is your business address? Bibb Brick Co.

D. To what post-office address are communications to be sent? 1921 So. 2d St., Macon, Ga.

E. My former residences were: Norfolk, Va.

2. A. Where were you born? Gallipolis, Ohio, Gallia (State or County).

B. When were you born? Month, Oct.; Day, 28; Year, 1863.

C. Age nearest birthday? 42.

D. Are you married? Yes.

E. Do you intend living or traveling outside the United States (exclusive of its tropical possessions and Alaska), Canada or Europe? If yes, give particulars. No.

3. What is your present occupation, kind of business, position held, and length of time so engaged? Answer in full. Brick maker, all of his life

B. What other occupations, if any, have you followed, and how long in each? No.

C. Do you intend changing your present occupation? If yes, state particulars. No.

D. Are you now engaged in, or have you ever been engaged in, or have you any intention of engaging, directly or indirectly, in the manufacture, sale or handling of malt or spirituous liquors? Give full particulars.

4. A. Are you now insured in this or any other company or association? Answer yes or no. Yes. If so, give name of company, amount insured, and kind of policy held. If in this company, give number of policy also.

B. Has any company or association ever declined to grant insurance on your life, or issued you a policy of a different kind, or for a sum less than that applied for, or has any physician ever expressed doubt as to your insurability? Answer yes or no. No.

C. If yes, give name of company or companies, and when.

Name of policy.	Amount.	Kind of policy.
Prudential	2000	20 P. L.
Mutual Life	2000	20 Gold Bond

D. Is an application for insurance on your life pending at
99 this time in any other company? If so, give name of company. Prudential & Aetna.

5. A. What kind of policy is desired? Whole Life.

B. What is the dividend period? 5 year.

6. A. Sum to be insured? $5000.

B. Is premium to be paid annually, semi-annually, or quarterly? Annual.

C. What amount have you paid in advance on account?

7. A. To whom is this insurance to be payable at your death? Full name. My estate.

B. Do you wish the privilege of changing the beneficiary at any time, if the policy or any interest therein be not then assigned? Answer yes or no. Yes.

I hereby declare and warrant that I am in good health, and of sober and temperate habits, and that all the statements and answers to the foregoing questions are complete and true, and that the foregoing, together with this declaration, and any statements I may make to the company's medical examiner in connection herewith, shall constitute the application and become a part of the contract for the insurance hereby applied for.

I hereby agree that if, within two years from the date hereof, I shall engage in blasting, mining, submarine labor, aeronautic ascensions, the manufacture of handling of highly explosive substances, the sale by retail of malt or spirituous liquors, or a lineman, putting up and handling highly charged electric wires, tending dynamos, puddling or working on any steamboat or other vessel, or on any railroad train as engineer or fireman, switching or coupling cars, or as conductor or brakeman of freight trains, unless written permission is granted by the company, or should death result in consequence of a duel or suicide, whether sane or insane, the liability of the company shall not exceed the amount of premiums paid on the policy.

I further agree and warrant that I will not engage in any military or naval service in time of war during the continuance of the said contract, without first obtaining written permission from the company.

I hereby agree that the policy herein applied for shall be accepted, subject to the privileges and provisions therein contained, and said policy shall not take effect until the same shall be issued and delivered by the said company, and the first premium paid thereon in full during my continuation in good health.

100 The applicant will please read carefully the answers written after each of the above questions before signing this application.

Signature of the person whose life is to be insured:

JOHN A. SALGUE.

Witness to signature:

GEO. COLLIER.

Dated at Macon, Ga., this 13 day of July, 1905.

Be sure that every question is answered in legible writing, and that the date of birth is correct. To be filled in by the soliciting agent. Give date on which examination was ordered. Jan. 13, 1905.

Who secured the above application? Geo. Collier.

General Agent Geo. Collier. Located at Macon, Ga.

No. Py., 273. Name, John A. Salgue. Sex, M. Does husband apply? Has his application been approved? No. Kind, Whole Life. Dividend Period, 5 Years. Age, 42. Amount, 5000. A premium, $165.35. Annual Premium, $165.35. Made out by C. C. Form I. App. Ex. for Pol. 7/15/05 Pol. Ex. .

Exhibit B, to my Deposition in Moore vs. the Prudential Life Insurance Co.

10/10/08. JOS. W. JOHNSON.

The Volunteer State Life Insurance Company, Home Office, Chattanooga, Tennessee. Medical Department, Joseph W. Johnson, M. D., Medical Director.

Instructons to Medical Examiners.

1st. This examination must be made in private, sufficient time to make same accurate and thorough.

2nd. Do not make an examination unless you have in your possession the application properly filled out and signed by the applicant.

3rd. Read the examination over carefully before mailing to the Home Office, to see that all questions are fully answered, thus avoiding correspondence and delay.

4th. The examination must be sent direct to the Medical Department of this Company by the Examiner.

101 Answers Made to the Medical Examiner in Continuation of and Forming a Part of My Application for Insurance in the Volunteer State Life Insurance Company, Dated July 13th, 1905, for $5,000.

1. Name in full? John Andrew Salgue.
2. Residence? Macon, Ga.
3. Do you intend changing your present residence? (If yes, state particulars.) No.
4. Date of birth? Oct. Day? 28. Month? Oct. Year? 1863.
5. Place of Birth? Gallipolis, Ohio.
6. Present Occupation? (State Particulars) Brick Maker.
7. Do you intend changing your present occupation? (If yes, state particulars.) No.
8. What other occupations have you followed, and how long in each? (State particulars.) None.
9. Have you ever been engaged in the manufacture, sale or handling of malt or spirituous liquors? (If yes, state particulars.) No.
10. Have you ever, or do you now use malt or spirituous liquors to excess? No.
11. The daily quantity used? None. Malt liquors? None. Wines? None. Spirits? None. How much in any one day at the most? None.

12. Have you ever taken treatment for alcoholic or narcotic habits? (If yes, state particulars.) No.

13. To what extent do you use tobacco? Daily amount? Form? None.

14. Do you now use, or have you ever used, opium, chloral, morphia or any other narcotic? (If yes, state particulars.) No.

15. Are you now insured? Yes. Amount? 2,000
2,000

Companies or Associations? Mut. Life, Prudential.

Date Sept. 9, May 9.

16. Have you ever been rejected or postponed by any Life Insurance Company, Assessment Society, or Benevolent Order? No.

102 When? x By what Company, Society or Order? x For what reason? x

17. Have you ever received a pension? (If yes, state particulars.) No.

18. Have you ever received a severe injury? No.

19. Have you ever undergone a surgical operation? No.

20. Are you now, or have you ever been ruptured? (If yes, state particulars.) Yes. If yes, do you agree to wear a properly fitting truss? Yes.

1. As far as you know, are you now in good health? Yes.

2. How long since you were attended by a physician, or professionally consulted one? 3 Mos. For what disease? (State particulars.) Bad cold 3 or 4 days.

3. Give name and residence of such physician? J. T. Ross, Macon, Ga.

24. Give name and address of your family physician? J. T. Ross, Macon, Ga.

25. Has your weight changed in one year? No.

26. Have you ever been advised to change climate for benefit of your health? (If yes, state particulars.) No.

27. How long have you resided in your present locality? 1 mos. Have you now, or have you ever had any of the following diseases? (Answer Yes or No to each. If yes, state particulars under hear of remarks).

Apoplexy? No. Habitual Headache? No. Acute Rheumatism? No. Chronic Diarrhœa? No. Asthma? No. Dizziness? No. Syphilis? No. Dysentery? No. Chronic cough? No. Sunstroke? No. Cystitis? No. Varicose vein? No. Spitting of blood? No. Paralysis? No. Stricture? No. Appendicitis? No. La Grippe? No. Loss of Consciousness? No. Disease of the skin? No. Tumor? No. Pneumonia? No. Persistent neuralgia? No. Fistula? No. Palpitation of the Heart? No. Pleurisy? No. Nervous prostration? No. Hemorrhoids? No. Jaundice? No. Epilepsy? No. Insanity? No. Renal or hepatic calculus? No. Diseases of the liver? No.

29. Have you ever had any illness or disease other than stated by you above? When? How long sick? Nature of illness? See remarks.

Family History.

103	Age (If Living.)	Condition of Health.	Age at Death.	Cause of Death.	How Long Ill.	Previous Health.
Father			57	Don't Know.	Not long.	Good.
Mother			40	Accidental.		Good.
Brothers, 2,			21			Good.
			26			Good.
Sisters, 2,	28	Good.	26	Tuberculosis.	3 mos.	

104 —. Have either of your paternal or maternal grandparents died of Consumption, Insanity, Cancer, Brights Disease, Apoplexy or any hereditary disease? If yes, which one and at what age? No.

31. Is your wife or any member of your immediate family affected with consumption? No.

32. Has any near relative, including uncles and aunts, been affected with consumption? No.

Remarks or Declaration Assured May Make to the Examiner.

In 1898 fell from a boat in very cold weather, some days afterwards began to have pains in joints, especially in knees, had no swelling, did not stop work, but condition lasted about three months.

It is hereby agreed that all the statements made in answer to the foregoing questions and explanations of same are warranted to be true, and are hereby made a part of this contract:

Dated at Macon, Ga., this 13th day of July, 1905.

Witnessed by the Examiner H. McHattan, M. D.

Signature of the person to be insured.

JOHN A. SALGUE.

Questions to be Answered by the Medical Examiner.

A. By what means are you satisfied as to the identity of the party you are about to examine? By appointment with agent.

B. Is there any physical mark of indentification? (If yes, state particulars). No.

C. Were the answers above signed in your presence by the applicant? Yes.

D. Does the applicant look older than age stated? No.

E. Have you any reason to doubt any statement made by the applicant? No.

F. Have you any reason to suspect intemperate habits? (If yes, state particulars). No.

G. Describe occupation of applicant. Boss brick maker.

H. Race? White. Sex? Male. Complexion? Fair—General appearance, good.

I. Is there any discharge from the ear or any defect in hearing? (If yes, state particulars). No.

105 J. Is there any defect in sight? (If yes, state particulars). No.

K. Temperature (under tongue)? 99.

L. Rate of pulse per minute? 70.

M. It is irregular? No.

N. Is the heart action clear, regular and normal in its force? No.

O. Is there any murmur with either sound or enlargement of the heart? (If yes, state particulars). Mitral.

P. Applicant's height? 5-7. Weight? 165½.

Q. Did you weigh and measure him? Yes.
R. Measurement of chest on full inspiration? 41. On forced expiration? 37¼.
S. Girth of abdomen? 36¼.
T. Shape of chest? (Examination of chest must be made stripped. Good.
U. Number of respiration per minute? 19.
V. Is repiration full and uniform throughout each lung? Yes.
W. Did you find any indication of disease of the respiratory organs? No.
X. Is there any disease of the throat? No.
Y. Has the applicant any disease or disorder of the nervous system? No.
Z. Is there any eruption on the body? No.
Z-1. Is there any evidence of the disease of the stomach, bowels or liver? No.
Z-2. Is there any evidence of the disease of the pelvic organs? No.
Z-3. Does the applicant's appearance indicate good health? Yes.

Analysis of Urine.

A. Was urine voided in your presence by applicant? Yes.
B.
C. Did you examine urine within twelve hours after voiding? Yes.
D. Specific gravity? 1025. Reaction, acid. Albumen? No. Test employed? Hilber. Sugar? No. Test employed Feblings.
Z-4. Where was this examination made? My office.
Z-5. Is the applicant free from any physical or mental defects? No cardiac disease.
Z-6. Is the risk first-class, average or poor? (If classed average or poor, state reasons under remarks). Poor.

106 *Any Remarks the Examiner May Wish to Make as the Result of His Examination.*

Applicant has a mitral.
First sound not strong.
Apex about an inch below normal line and displaced to left.
I hereby certify that the above and foregoing statements and answers are true.
Made at Macon, Ga., this 13 day of July, 1905.

H. McHATTAN, M. D.,
Medical Examiner.

To be filled in by the Examiner.
Application received July 13th, 1905.
Mailed to Home Office, July 14, 1905.
Post Office, Macon, State, Ga.

Table of Height and Weight.

Based upon Analysis of 74,162 Accepted Male Applicants for Life Insurance.

The light-faced figures are 20 per cent. over and under the average.

Feet	Inches	Ages 15-24	Ages 25-29	Ages 30-34	Ages 35-39	Ages 40-44	Ages 45-49	Ages 50-54	Ages 55-59	Ages 60-65
		96	100	102	105	106	107	107	107	105
5	0	120	125	128	131	133	134	134	134	131
		144	150	154	157	160	161	161	161	157
		98	101	103	105	107	109	109	109	107
5	1	122	126	129	131	134	136	136	136	134
		146	151	155	157	161	163	163	163	161
		99	102	105	106	109	110	110	110	110
5	2	124	128	131	133	136	138	138	138	137
		149	**154**	157	160	163	166	166	166	164
		102	105	107	109	111	113	113	113	112
5	3	**127**	**131**	134	136	139	141	141	141	140
		152	157	161	163	167	169	169	169	168

108 F	Inches	Ages	Ages	Ages	Ages	Ages	Ages	Ages	Ages	Ages
5	4	105	108	110	112	114	115	116	116	115
		131	135	138	140	143	144	145	145	144
		157	162	166	168	172	173	174	174	173
5	5	107	110	113	114	117	118	119	119	118
		134	138	141	143	146	147	149	149	148
		161	166	169	172	175	176	179	179	178
5	6	110	114	116	118	120	121	122	122	122
		138	142	145	147	150	151	153	153	153
		166	170	174	176	180	181	184	184	184
5	7	114	118	120	122	124	125	126	126	126
		142	147	150	152	155	156	158	158	158
		170	176	180	182	186	187	190	190	190
5	8	117	121	123	126	128	129	130	130	130
		146	151	154	157	160	161	163	163	163
		175	181	185	188	192	193	196	196	196
5	9	120	124	127	130	132	133	134	134	134
		150	155	159	162	165	166	167	168	168
		180	186	191	194	198	199	200	202	202

Feet	Inches	Ages	Ages	Ages	Ages	Ages	Ages	Ages	Ages	Ages
5	10	123	127	131	134	136	137	138	138	139
		154	159	164	167	170	171	172	173	174
		185	191	197	200	204	205	206	208	209
5	11	127	131	135	138	140	142	142	142	144
		159	164	169	173	175	177	177	178	180
		191	197	203	208	210	212	212	214	216
6	0	132	136	140	143	144	146	146	146	148
		165	170	175	179	180	183	182	183	185
		198	204	210	215	216	220	218	220	222
6	1	136	142	145	148	149	151	150	151	151
		170	177	181	185	186	189	188	189	189
		204	212	217	222	223	227	226	227	227
6	2	141	147	150	154	155	157	155	155	154
		176	184	188	192	194	196	194	194	192
		211	221	226	230	233	235	233	233	230
6	3	145	152	156	160	162	163	161	158	
		181	190	195	200	203	204	201	198	
		217	228	234	240	244	245	241	238	

110 Indorsement: The Volunteer State Life Insurance Co. Home Office, Chattanooga, Tenn. Medical Examination of John A. Salgue. The blank spaces are to be filled up only at Home Office. Number Py 273. Amount 5,000. A premium 165.35. Received at Home Office, 7/15/05. Agent Geo. Collier. Examiner H. McHattan. Examined, 7/13/05. Rejected Jos. W. Johnson, Med. Director. Date July 17, 1905.

For the defendant, The Prudential Insurance Company of America, GEORGE W. WILKINS testified by interrogatories as follows:

My name is George W. Wilkins. I am 66 years old, and reside at Montreal, Canada. I am connected with the Sun Life Insurance Company. I am chief medical officer, and have been chief medical officer for about 20 years, which is the same position as medical director in most companies. My duties are to revise all applications for insurance, and advise whether or no they shall be accepted or declined. One John Andrew Salgue of Macon, Georgia, applied to us for insurance as per application, dated 28th June, 1905. I have now before me the original application and the report of the medical examiner, also revival certificate, dated Macon, Georgia, October 20, 1905. The rules of our company do not permit me to part with the original papers. I therefore attach hereto, identified by my signature, certified by me a copy of the application and revival certificate and medical report which I certify to be correct. The application and medical examination made by our Medical Examiner, Dr. R. B. Barron, was submitted to and approved by me. I have no knowledge to the advantage of either parties, except that from correspondence that I now see before me. I believe policies were not taken up at the time that they were issued, but were subsequently issued on the production of revival certificate, copy of which is attached hereto.

(The following are copies of the application, medical examination and revival certificate referred to in the testimony of the above witness):

111 No. 124,881 & '2.

Application for Assurance to the Sun Life Assurance Company of Canada.

1. Name (in full) of life to be assured?
John Andrew Salgue, Macon, Ga.
2. Occupation? (Mention exact line of business; if more than one, state all).
Supt. of Bibb Brick Co.
3. Have you ever been connected with the manufacture or sale of liquors? Are you so engaged now?
No.
4. Place and date of birth?

Place.	Year.	Month.	Day.
Gallipolis, Ohio.	1863	Oct.	28

5. Age nearest birthday?
43.
6. Are you married?
Yes.
7. Sum to be assured?
$6000, $3000 and $3000 two policies.
8. Kind of policy? If on the reserve dividend plan, state the R. D. period.
Ordinary life now par.
9. If a "Guaranteed Income Policy" is desired, please answer the following:
Date of birth of beneficiary? Age next birthday?
10. Are premiums to be paid annually or half yearly?
Annually. Premium—$178.20.
11. Name in full and occupation of person to whom the assurance is to be paid in event of death?
a. Estate. Interest of beneficiary in the life.
b. If endowment or on the reserve dividend plan, to whom
112 payable if the life survives the endowment or reserve dividend period.
Estate.
c. Do you wish to reserve the right to change the beneficiary at any time, provided the policy has not been assigned?
Yes.
12. Name of intimate friend (not a relative)?
Name—W. J. Masse.
Occupation or profession—Brick manufacturer.
Residence—Macon, Georgia.
13. Are you now assured in this company or have you ever been? If so, give details?
No.
14. Are you now or have you ever been assured in any other assurance company or society? If so, kindly give the details.

Company.	Amount.	Kind of policy.	Year when taken.	If cancelled, date of lapse.
N. Y. Life	$2000	20 Pay.	1898	In force
Prudential	$2000	Gold B.	1902	" "

15. Has any company ever declined to assure your life or offered you a policy on a different plan or at a higher premium from that for which you applied?
No.
16. Has any physician ever given an unfavorable opinion regarding your life? Give details?
No.
17. Has any application been made by you to any company or agent and afterwards withdrawn or not yet completed? Give details?
No.
18. Have you paid the first premium upon the policy applied for? If so, what amount and to whom? Give the number of interim receipt?
No.



113 I warrant that the above answers are full and true, a
that I am now and usually in sound health; and I agr
that this declaration with the answers to be given by me to the me
cal examiner, shall be the basis of the policy and of the interi
assurance should any be granted; that the methods which may
adopted by the company for any distribution of surplus and
determination of the amount apportioned to said policy, are hereb
accepted for every person who shall have any interest in said polic
that I will accept said policy when issued and pay the first premiu
thereon, and that said policy shall not take effect until the fir
premium has been paid during my life and good health; that
any premium be settled wholly or in part by check, note or oth
obligation, such obligation shall not be considered as payment, b
only as extension of the time for payment, and if not fully pai
when due, said policy shall thereupon become void unless speciall
provided in express terms in the policy that it shall be kept in forc
under the non-forfeiture agreement; that no premium shall be con
sidered paid unless a receipt be given therefor, signed by the pres
dent or secretary, that if I die by my own act, whether sane or in
sane, within one year from this date, then said policy shall be void
Dated at Macon, Ga., the 28 day of June, 1905.

(Signed) JOHN ANDREW SALGUE.
(Life to be assured.)

I confirm the foregoing declaration and agreement.

Witness:
Signed) E. H. HOLLAND.

Questions to Be Asked by Medical Examiner.

Name of person examined. John Andrew Salgue.
Exact occupation. Supt. Brick Maker.
Age. 42.
1. Family History—
Father alive or dead? If alive, at what age? State of health? If dead, age at death?
67 years.
114 Cause of death?
Don't know, I was away from home.
How long ill?
Mother alive or dead? If alive, at what age? State of health? If dead, age at death?
40 years.
Cause of death?
Drowned.
How long ill?
Brothers—Total number?
Two.
How many living?
Ages?
How many dead?
Two.

Ages at death?
23 and 26 years.
Cause of death?
Killed by boiler explosion.
Killed by falling trestle.
Sisters—Total number?
Two.
How many living?
One.
Ages?
28.
State of health?
Good.
How many dead?
One.
Age at death?
23.
Cause of death?
Contracted consumption.
How long ill?
Three months.

2. When any indefinite term, such as "Childbirth," "Change of life," "Exposure," "Intemperance," "Dropsy" or "Unknown," is used in above record:

a. Was cough present during last illness?
b. How long in impaired health previous to death?
115 *c*. In case of "Childbirth," how long did she survive delivery?
Referring to death of
a. —— ——
b. —— ——
c. —— ——

3. When any member of family has died of any lung disease?
Referring to death of sister.
How long was she subject to cough before death?
Three months.
How long in impaired health?
Three months.

4. Has any uncles or aunts or other relatives died of or suffered from consumption, bronchitis or other chronic lung disease?
No; only sister, as above.

5. Have any relatives suffered from insanity, epilepsy or gout?
No.

6. Is any member of the household with which you reside now suffering from lung trouble or has any such member died from lung trouble within the last two years? Give details?
No.

7. Are you now in perfect health?
Yes.

8. When were you last confirmed to the house by illness? Give details?
April, 1905. Bilious attack; sick one day.

9. *a.* On what occasions have you consulted a physician?
As above.

b. Have you ever consulted a physician about your lungs or t
a cough?
No.

10. Have you ever suffered from any complaint or affectio
116 *a.* Of the brain or nervous system (fits, insanity, loss
consciousness, spinal disease, delirium tremens, sunstrok
difficulty with eyesight or hearing, etc., included?)
No.

b. Of the throat or lungs (asthma, bronchitis, habitual coug
spitting or coughing of blood and lung or chest disease of any kin
included?)
No.

c. Of the heart or blood vessels (palpitation included?)
No.

d. Of the digestive organs (dyspepsia, dysentery, liver complaint
hernia, etc., included?)

e. Of the urinary or generative organs (gravel, renal or hepati
colic, stricture, diabetes, etc., included?)
No.

f. Other complaints (such as debility, suppurating glands, gout
rheumatism, dropsy, cancer, syphilis?)
No.

11. Have you had any other illness, disease, operation or injury?
Give details?
No.

12. *a.* Have you been vaccinated?
Yes.

b. Have you had small-pox?
No.

13. *a.* Do you ever take wine, spirituous or malt liquors? If so,
to what extent?
Don't use at all.

b. Have you ever used them more than now, if so, to what extent?
No.

c. Have you ever used them too freely, if so, when, how long and
to what extent?
No.

d. Have you undergone any treatment in this connection or been
advised on the score of health to lesson the amount taken by you?
No.

117 14. Have you used opium or other narcotics?
No.

15. Where have you resided? When and how long in each
country?
Ga., 4 years; 6 in Va., 8 in Pa.

16. Have you changed your residence or occupation on account
of health?
No.

17 Have you any intention of going to any tropical or unhealthy
country or of changing your occupation? Give details?
No.

18. Are you aware of any circumstances not disclosed above which might have an unfavorable bearing upon -he [the] desirability of the risk?

No.

I certify that my answers to the foregoing questions are correctly recorder [recorded], and I understand and agree that the company is not bound by any statements which I may have made to any person if not written above.

Date June 29th, 1905.

(Signed) Signature of applicant,
JOHN ANDREW SALGUE.

In presence of
(Signed) ROBERT B. BARTON,
Medical Examiner.

118 *Report and Opinion of Medical Examiner.*

1. Are you personally acquainted with applicant? How long have you known him?

No.

2. Have you attended him professionally? If so for what and when?

No.

3. What is your opinion of the locality in which he resides?

First Class.

4. Do you think his social and financial position warrants his applying for a policy of the amount proposed?

Yes.

5. Have you any reason for hearsay personal knowledge or appearances to suspect that he uses liquor otherwise than in a strictly temperate manner?

No.

6. Description:

Height in boots, 5 ft 8½ inches.
Weight in summer clothing, 168 lbs.
Circumference on full inspiration, 40.
Circumference on forced expiration, 36.
Measure around abdomen, 37.
Figure erect or stooping—erect.
Race, white.
Color of hair, brown.
From his appearance what would you estimate his age to be?
42 years.

7. *a.* Has he ever weighed more than at present, if so how much?

No.

b. When did the decrease commence? What was its cause?

None.

c. When did he cease to lose weight, or is it still going on?

None.

8. Have you made a stethoscopic examination of the chest on the

naked skin? This is required before policy will be issued?
Yes.

119 9. *a.* Is respiratory murmur clear and distinct over every part of both lungs, and are the organs of respiration perfectly healthy?
Yes.

b. Is there any peculiarity in shape capacity or movements of the chest?
No.

Number of respirations per minute?
18.

10. *a.* Are the heart's sounds and action regular and in every respect normal?
Yes.

b. Is there any intermission irregularity or peculiarity in the pulse?
No.

Number of pulsations per minute?
76.

c. If applicant is over 50 years of age have you examined heart and blood vessels for signs of arterial sclerosis?
None.

11. Are the brain, nervous system, liver and other organs perfectly healthy?
Yes.

12. Examination of Urine:

What evidence have you that the urine examined by you was passed by applicant?
Saw him pass it.

Specific gravity?
1020.

Albumen?
None.

Sugar?
None.

Anything abnormal in urine or micturation?
No.

Has he ever been told that he has albumenuria?
No.

120 13. If applicant be a woman:

a. Past and present state of uterine functions?

b. How long has she been married?

Is she now pregnant?

d. How many children at full term has she had?

e. How many miscarriages? What circumstances? When was the last? Have any consequences affecting or likely to affect her health resulted?

f. Have labors been difficult or dangerous? Is any risk apprehended in future?

g. Has she experienced "change of life," if so when?

14. General appearance: Strong, vigorous, rugged, delicate, ruddy or pale?
Strong.
15. Insert here a summary of all unfavorable features either personal or connected with the family history which in any way detracts from the quality of the life.
None, only sister died of consumption.
16. What "expectation" do you give applicant?
The expectation for first class lives is as follows: Age 20, 42 years; Age 25, 39 years; Age 30, 35 years; Age 35, 32 years; Age 40, 28 years; Age 45, 24 years; Age 50, 21 years; Age 55 17 years; Age 60, 14 years; Age 65, 11 years; 26 years.
17. Leaving family history out of consideration how would you classify his chances of long life—as over average, good, fair, doubtful or bad.
Good.
18. Assuming the correctness of the answers given by applicant and reviewing the result of your own examination, do you recommend that a policy be granted? If "yes" (A) at ordinary rates and without a lien; or (b) subject to a lien?
Yes, at ordinary rate without a lien.
The medical examiner will kindly remember that the company looks to him to protect its interest by answering the questions as fully and carefully as possible, and by stating any additional facts (by private letter or otherwise) which, according to his judgment, will enable the Head Office better to judge the eligibility, or otherwise of the risk.
121 I have this day examined the above applicant in private, no other person being present.
Dated at Macon, Ga., this the 29th day of June, 1905.

Signature of MedicalOfficer,
ROBT. B. BARRON.

We the undersigned commissioners do hereby certify under our oath of office that this is the certified copy of the Application and Medical report referred to by the witness George Wilkins.
15th October, 1908.

J. W. OAK,
A. R. MASTERS,
Commissioners.

Agent's Report.

1. How long have you known applicant?
Short time.
2. Have you ever heard of his being ill? Give particulars.
No.
3. Is he in thoroughly good health now?
Seems to be.
4. Is he perfectly sober and temperate and has he always been so?
Don't know.

5. Do you consider his life to be over average, average or u
average?
Over average.
6. What is the object of this assurance?
Protection of estate.
7. Have you any reason to suppose that it is intended to as
the assurance to some third person? If so give full details.
No.
8. Is the financial position of applicant such as to warrant
applying for a policy of the amount proposed?
Yes.
122 9. Do you unqualifiedly recommend for assurance at
dinary rate.
Yes.
Dated at Macon, Ga., 6-29-1905.
(Signed)
E. H. HOLLAND, *Agent*

Friend's Report.

1. How long have you known Mr. Salgue?
Four years.
2. *a.* Are his habits in all respects absolutely temperate?
Absolutely.
b. Have they always been so?
To the best of my knowledge.
c. Have you ever known or heard of his being under the influen
of liquor?
No.
3. Have any near relatives been afflicted with consumption, lu
trouble or any hereditary disease?
No.
4. Has he suffered from any serious illness?
No.
5. Is he at all subject to colds or coughs?
No.
6. Does he show any indications of weakness of constitution?
No.
7. Do you consider him as regards robustness to be over th
average, average, or under the average of men at his age?
Over the average.
8. Is his financial position such as to warrant his applying for a
policy of the amount proposed?
Yes.
9. Do you consider him one of the best lives of his age known to
you, or do you consider him only a fair life?
One of the best—very best in fact.
Dated at Macon, Georgia, July 1, 1905.
(Signed)
N. J. MASSEE,
V. Pres. Bibb Brick Co.

123 Sun Life Assurance Company of Canada.

Revival Certificate.

Policy 124882. Lapsed ——.

Applicant's Statement and Declaration.

1. Are you now in an unexceptionally state of health? Yes.
2. Do you suffer from any weakness, disorder or disease? No.
3. Since you applied for this policy have you had any disorder or illness of any kind, or required any medical attendance? Give details. No.
4. Have there been any deaths among your relatives since the issue of your policy, or are any of them now in poor health? If so, give full details. No.
5. Are you strictly sober and temperate in your manner of living? Yes.

I, the person whose life is assured by Policy No. 124882 of the Sun Life Assurance Company of Canada, which policy has lapsed, do hereby apply to have the same revived, such revival to be based on the truthfulness of the above answers.

(Signed) JOHN A. SALGUE.
(Signature of life assured.)

Place and date Macon, Ga., Oct. 20, 1905.

I confirm the above statements and application.

——.
(Signature of beneficiary.)

Agent's Report.

1. Are you personally acquainted with applicant; if so for how long? Few months.
2. When did you last see him? October 20, 1905.
3. What are his habits in regard to the use of intoxicating liquors? Uses none to my knowledge.

124 4. Have you any reason to believe that any of the statements made in the above declaration are otherwise than in accordance with the facts of the case? No.

5. Do you consider him to be above or below the average life of his age as regards health and robustness? Above.
6. Do you unreservedly and without hesitation recommend the applicant as an unexceptionable life for assurance, and that the policy be revived? Yes.

(Signed) E. H. HOLLAND, *Agent.*

Place and date Macon, Ga., Oct. 20, 1905.

Medical Report.

I certify that I have this day carefully examined the above tioned Mr. J. A. Salgue and find as follows:

1. Present weight? 168 lbs.
2. Are lungs and heart normal? Yes.
Is urine normal? Yes.
3. Does he suffer from any weakness or disorder of any whatever? No.
4. Is he now in unexceptionably robust health in every way?
5. Has he at any time during the last ten years suffered from illness or weakness of any kind, or required any medical attenda Had malaria in Feb., 1905.
6. Have you any reason to suspect that his habits are in the sl est degree intemperate? No.
7. Do you unreservedly and without hesitation recommend as in every respect a desirable life for assurance at ordinary ra Yes.

(Signed) ROBT. B BARRON

Place and date Macon, Ga., Oct. 20, 1905.
Medical Fee Must Be Paid By Applicant.

125 We, the undersigned Commissioners, do hereby certify der our oath of office that this is the certified copy of the " vival Certificate" referred to by the witness, George Wilkins.
Montreal, ——, 15 Oct., 1908.

J. W. COOK,
A. R. McMASTER,
Commissioners

For the Defendant, The Prudential Insurance Company of Am ica, ELMER A. SCOTT testified by interrogatories as follows:

My name is Elmer A. Scott. I am 38 years old, reside at Asbu Park, New Jersey. I am a physician. I was connected with t Provident Savings Life Insurance Society of New York from 19 to 1906 as Assistant Medical Director and Medical Director duri this time. John A. Salgue made application for insurance to t Society named. He was examined by Dr. Robert B. Barron, Macon, Georgia. The application and medical examination w passed upon by me.

(The Defendant, Prudential Insurance Company next introduce in evidence the application and Medical Examination of John A Salgue to the Provident Savings Life Insurance Society.)
(These papers were as follows:)

Part I.

I Hereby Apply to The Provident Savings Life Assurance Society of N. Y. For Assurance Upon My Life.

Full name: John Andrew Salgue.
Sex: Male.
Residence: 1921 Second street, Macon, Ga., Bibb County.
Place of Business and Name of Employers; Street and Number: Bibb Brick Company, Macon, Ga.
Nature of Business: Superintendent.
126 Place of Birth: Gallipolis, Gallia County, Ohio.
Date of Birth: Oct. 28th, 1863.
Age, nearest: Forty-two (42) years.
Single, married or widowed: Married.
The address to which I desire notices of premium sent is Bibb Brick Co., Macon, Georgia.
Present occupation (specific)? Supt. Bibb Brick Co.
Past occupation? Same.
How long have you resided at above address? Three years.
Where did you formerly reside? Norfolk, Virginia.
Do you contemplate changing your residence or making a journey? If yes, when and to what place? No.
Amount of insurance desired? $5,000.00.
Premium $184.40 paid? Annually.
Kind: Term and continued payments, Spec. Investment.
Form No. 906.
Assurance for benefit of? Estate.
(On prior decease of Beneficiary such interest to revert to Assured).
Residence of Beneficiary?
Relationship of Beneficiary to Applicant?
Do you wish to reserve the right to change the beneficiary at any time, if the policy be not then assigned? Yes.
Are you now or have you ever been assured in this Society and for what amount? No.
Are you now insured in any other life assurance organizations? If so, state name of such organizations and the amount insured in each? Prudential, N. J., $1,000.00; Mutual Life, N. Y., $2,000.00.
127 Are you negotiating for life insurance? If so, state in what organization and for what amount? No.
Are you now or have you ever been engaged, directly or indirectly, in either the sale or the manufacture of wines, spirits or malt liquors? No.
Has any life assurance organization ever postponed, rejected or limited as to amount, form or premium, your application for assurance or restoration of lapsed policy? (Full particulars required) No.
Do you agree that no statements, promises, information, or agreements made or given by, or to, the person soliciting or taking this

application for a policy, or by or to any other person, sh
binding on the Society, or in any manner affect its rights
such statements, promises, information or agreements be re
to writing, attached to this application and approved by the o
of the Society at the Home Office? Yes.

I hereby warrant on behalf of myself and of any person who
have or claim any interest in any policy issued hereunder, th
statements and answers contained in this application, consisti
Part I and Part II, by whomsoever they may be written, ar
terial to the risk, and are true and complete and are offered
sole basis of the proposed insurance; and that if any such
ments or answers be either untrue or incomplete, or if any
conditions of the policy be violated, said assurance shall be nul
void and all payments made or accepted on account thereof
be forfeited to the Society except to the extent as provided i
policy.

I hereby agree:

1. That, unless with the written permission of the Society in
case, I will not, within two years from date of policy, travel
side in any part of the Torrid Zone, or north of the parallel of
degrees north latitude; nor engage in military or naval se
blasting, mining, sub-marine labor, aeronautic ascensions, the m
facture, handling or transportation of highly inflammable o
plosive substances, or service in any vessel or boat, or railroad se
or in other hazardous occupation.

2. That self-destruction, whether sane or insane, voluntar
involuntary, or death resulting from actual or atten
128 violation of law, are risks not assumed by the Society w
two years from date of policy.

3. That this application, consisting of Part I and Part II
gether with the policy hereby applied for, shall constitute the
tire contract between the parties hereto.

4. That in any distribution of surplus or apportionment of pr
the principles and methods which may be then adopted by
Society for such distribution or apportionment, and its determ
tion of the amount to be so distributed or apportioned, an
the amount belonging to any policy which may be issued under
application, shall be conclusive upon the assured under said p
and upon all parties having or claiming any interest thereunde

5. That all provisions of law forbidding any physician who
or shall have attended me from disclosing any and all informa
which he acquired by such attendance, are hereby waived, and
waiver is part of the consideration for any policy to be issued
under.

6. That no agent of the Society shall have power to make
contract of insurance or to modify or to waive any of the terms
conditions of this application or of the policy, or to waive any
feiture, or to bind the Society by making any promise or by m
ing or receiving any representation or information, or to accep
payment of the first premium under such policy anything ex
cash.

7. That, as the officers of the Society at the Home Office alone have power to make contracts of insurance, and as they act only on written applications, the Society shall *occur* no liability until this application has been received, approved and a policy issued thereon by the Society, and until such policy has been delivered to me and the premium has been actually paid in cash to and accepted by the Society or its duly authorized agent during my lifetime and good health.

Dated Macon, this 30th day of June, 1905.

(Signed) JOHN ANDREW SALGUE, *Applicant.*

129 Agent's Certificate.

How long have you known applicant: Three months.
Examined by Dr. R. B. Barron.
On July 1st, 1905.
I certify that I have this day personally questioned the applicant and that I have seen him write his signature as above.

(Signed) J. G. WILSON,
Soliciting Agent.

General Agent:
J. R. NUTTING & CO.

(Supplementary Questions in case of Women, on reverse side).

Supplementary Questions on Female Lives to be Answered in all Cases, Without Exception, by the Soliciting Agent.

1. Name of the woman.
2. If married, state maiden name.
3. Has the woman property in her own right?
4. What is her source of income?
5. Will she pay the premium herself?
6. Is the amount proportionate to her means?
7. If married, give her husband's full name, occupation and address.
8. Is he assured, if so, in what company, for whose benefit, and for what amount?
9. Is she engaged to be married within next two years?
10. Give the motive for the assurance, and also full details of the interest of the beneficiary in the applicant's life.

Dated at — 190–.

_____,
Signature of Soliciting Agent.

130 This Blank is to be Used when Application is for $1,0
or Over.

Application to the Provident Savings Life Assurance Society
New York.

346 Broadway.
Timothy L. Woodruff, President.
Eugene L. Fisk, M. D., Medical Director.

Part II.

Statements to the Medical Examiner.

1. *a.* Full name: 1. *a.* John Andrew Slague.
b. Race and place of birth: *b.* White, Gallipolis, Ohio.
c. Date of Birth: *c.* Oct. 28, 1863.
b. Occupation, past and present: Brickmaker, Superintendent.
2. Is your present and usual health in any way impaired:
No.

3. *a.* What is your practice as regards the use of spirits, wine malt liquors or other stimulants? (state specifically the form, ho much and how often)
Don't use at all.

b. Have you ever used them freely, or to the point of intoxication If yes, give full details stating when to what degree, how often, an how long since last overindulgence. (Question refers to occasiona as well as habitual excess, or intoxication).
No.

c. Are you or have you ever been addicted to the use of opium morphine, chloral, cocaine, or other narcotic drug? (If yes, give ful details as in case of alcoholics).
No.

d. Have you ever taken treatment for alcoholic or narcotic habit (Particulars required).
No.

4. Have you ever been an inmate of any hospital, asylum, o visited any health resort, travelled, or changed your residence on ac-
count of health? (If yes, give dates and details.)
131 No.

5. Have you now or have you ever had any of the follow- ing: Answer "yes" or "No" to each. If "yes" give particulars under 8 below.
Appendicitis: No.
Appoplexy: No.
Asthma: No.
Bronchitis: No.
Cancer or Tumor: No.
Chronic Cough: No.
Delirium Tremens: No.
Diabetes: No.

Disease of Brain: No.
Disease of Ear: No.
Disease of Heart: No.
Disease of Kidneys: No.
Disease of Bladder: No.
Difficult or Frequent Urination: No.
Disease of Liver: No.
Disease of Lungs: No.
Disease of Skin: No.
Disease of Spine: No.
Disease of Stomach: No.
Disease of Bowels: No.
Disease of Sexual Organs: No.
Dizziness or Vertigo: No.
Diarrhœa (Chronic): No.
Dropsy: No.
Dyspepsia: No.
Dysentery: No.
Epilepsy Fits: No.
Gout: No.
Gravel: No.
Gall-stone Colic: No.
Habitual Headache: No.
Hernia: Yes.
If so, do you now and will you always wear a properly fitting truss: Yes.
Insanity: No.
Insomnia: No.
Jaundice: No.
Neuralgia: No.
132 Palpitation: No.
Pain in Chest: No.
Paralysis: No.
Physical Injury: No.
Piles: No.
Pleurisy: No.
Pneumonia: No.
Renal Colic: No.
Rheumatism-Sciatica: No.
Scrofula: No.
Shortness of Breath: No.
Spitting Blood: No.
Sunstroke: No.
Surgical Operation: No.
Syphilis: No.
Tape Worm: No.
Fistula: No.
General Debility: No.
Unconsciousness: No.
Yellow Fever: No.
Give as accurately as possible the following items of Family

History, avoiding all vague terms, such as "Childbirth," "Fever," "Decline," "Exposure," etc. Fully explain impaired health of living relatives.

6. Father—living; age: 67; How long sick: Don't know. I was away from home; Previous health; Good.
Father's Father—Don't know; Died in France.
Father's Mother—Don't know. Died in France.
Mother— 40; Drowned.
Mother's Father—Died old; How long sick: Don't know.
Mother's Mother—Died old; How long sick: Don't know.
How many brothers have you had: Ans. Two.
Age: 23; dead; Boiler Explosion; Previous health: Good.
Age: 26; Killed by fall of R. R. Trestle; Previous Health: Good.
How many sisters have you had: Ans. Two.
Age: 28; dead; Contracted consumption; How long sick: 3 mos.; Previous health: Good.
Age: 38; Living; Health: Good.

7. Have you or any of your blood relatives ever attempted suicide or been afflicted with consumption, insanity, cancer, or any hereditary disease?

Only sister as above.

133 8. Clinical History—Describe briefly the history of any affection experienced by applicant as per his answers in 5. If more space is required, use that under head of "Special Medical Notes" on reverse side of sheet.
Affection: Hernia.
Date: 1888.
Duration: Still have it.
Severity: Small.
Result: ——.
Name of physician: Dr. who fitted truss I don't remember still wear truss.

9. Any serious disease, injury or infirmity other than listed above? (Answer "yes" or "no." If "yes" give full details)
No.

10. Have you been successfully vaccinated? (Answer "vaccinated" or "not vaccinated").
Vaccinated.

11. When and by what physician were you last attended, and for what complaint?
March 1905, Dr. Stapler; boils in nose.

12. Give name and address of your usual medical attendant?
Dr. J. T. Ross, Macon, Ga.

13. Have you ever applied for or received a pension or sick benefit from any government corporation or society? (If so, state reason therefor.)
No.

14. Has any life assurance organization ever postponed, repected or limited as to amount, form or premium, your application for assurance or restoration of lapsed policy? (Full particulars required).
No.

15. Have you ever been refused for military service? (If "yes," state when and for what reason).
No.
I hereby declare that I have read and understand all the above questions and the answers thereto, and they are hereby made part of my application for assurance by the Provident Savings
134 Life Assurance Society of New York, and I hereby warrant said answers, as written, to be true, and that I am the person described above and in Part I of this application signed by me.

JOHN ANDREW SALGUE,
Person Examined.

Witness:
ROB'T B. BARRON, *M. D.*
Dated this 1st day of July, 1905.

Medical Examiner's Report.

1. *a.* Weight? (Get actual weight, if possible.)
170 lbs.
b. Height? (Take measurements yourself.)
5 ft., 8½ ins.
Girth of Chest, under vest, forced expiration?
36 in.
d. Girth of Chest, under vest, forced inspiration?
40 in.
e. Girth of abdomen?
38 in.
f. If under or over weight is this feature an individual or family trait.
Neither.
g. Any deformity, maiming or loss of limb?
No.
h. Did you weigh and measure applicant:
Yes.
i. If not, do you doubt the accuracy of figures given?
j. Has he recently gained or lost weight? (Give particulars as how much loss or gain, and cause of same)
No.
2. How long have you personally known the applicant?
Only at this examination.
3. Is there anything unfavorable in physique or general appearance, delicate aspect, unduly full habit, etc.?
No.
4. Is there any lack of acclimation, unfavorable effect from environment, residence, occupation, etc.?
No.
5 5. Is it your opinion that any former injury or sickness has affected his constitution unfavorably?
No.
6. Have you any reason to doubt the completeness and truthfulness his statements in Part II as to the use of stimulants?
No.

7. Are there any indications of disease or functional derangement of brain or nervous system?
No.
8. Is there any serious impairment of sight or hearing?
No.
9. Are there any symptons of disease of the respiratory organs, or any abnormalities of same discoverable by auscultation or percussion?
No.
10. *a.* What is the pulse rate? (Full minute. If excited, re-examine until satisfied of normal rate).
78 and normal.
b. Any intermittance, irregularity, high-tension or undue strength or weakness present?
No.
c. Any evidence of Antheroma, Aneurism, or other disease of the blood vessels?
No.
d. Any abnormality of heart discoverable by auscultation or percussion?
No.
11. *a.* Are there any indications of disease of the digestive organs?
No.
b. Any enlargement of liver or spleen or evidence of disease of abdominal organs?
No.
12. Any skin eruptions, sores or ulcers?
No.
136 13. *a.* Result of urinary analysis? (Satisfy yourself that the specimen furnished is authentic).
Specific gravity, 1022; Albumin, none; Sugar, none; Reaction, acid; Test employed, Heat and vitric acid; Test employed, Fabrangs.
b. Any abnormalities found in the urine except as noted in "A"? If microscopical examination is required, report results on special blank furnished for this purpose, or in separate letter, and attach to this report.
None made.
14. Was there anyone present at this examination but yourself and applicant?
No.
15. Do you know of anything in the physical condition, past health record, family history, personal history or habits, not already detailed which may affect the risk unfavorably? (Particulars required.)
No.
16. Do you recommend the risk?
Yes.
17. Under classification given on opposite page, how do you rate this applicant? (If other than "A" give reasons for lower rating.)
"A."

I hereby declare that I have this day carefully examined the above named person, being the same person described in Parts I

and II of this application; that I have attentively considered the statements made by him therein and have myself written those in Part II, and seen him write his signature thereto. Examined at: Town, Macon; State, Ga., the 1st day of July, 1905, at — A. M.; 1 P. M. If not Medical Examiner for the Society obtain from agent, Society's Medical Certificate, and forward information requested to Home Office.

(Medical Examiner for Society) ROB'T B. BARRON, M. D.,
Residence, Macon, Ga.

(In red print at bottom of page.)

Space for additional remarks will be found on reverse side of sheet under head of "Special Medical Notes."

In lower right hand corner is written in ink "Previous insurance none."

137 On the left hand margin in red print is "mailing examination direct."

When the examination is completed, the Application (Part I), having been read by the Examiner, is to be returned to the Agent, and this paper is not to be shown to anyone but is to be immediately mailed by the Examiner to the Medical Directors at the Home Office. Do not fail to read carefully the other side of this sheet."

On the right hand margin in red print is "every question must receive an answer. Ditto marks are not answers. Answers copied from other papers not Accepted."

At the top of the Application has been written in ink "Exhibit B. 1028 '08. E. A. Scott, M. D. Ganard Glenn, Com'r, Thomas J. Purdy, Com'r.

Special Medical Notes.

(None Given.)

If Applicant is a woman, the following questions in continuation of Part II, must be answered.

16. Have you now, or have you ever had, any organic disease of the uterus or ovaries, or is any suspected by you?

17. *a.* Is there any irregularity in your menstruation?

b. Has there ever been any irregularity?

18. Are you now, or have you been, affected with any disease of the breast?

19. Have you successfully passed the change of life?

20. Give the date of last menstruation?

21. What is your husband's occupation?

22. How long have you been married? If husband deceased, give date and cause of death.

23. If pregnancy has existed, has any serious trouble occurred during labor? If "yes," give particulars.

138 24. Have you ever miscarried? If so, date, how often, and under what circumstances?

25. *a.* How many children have you had?

b. Date of last confinement with living child at full term?

c. Are you now pregnant?

I hereby declare that I have read and understand all the above questions and the answers thereto, and they are hereby made part of my application for assurance by the Provident Savings Life Assurance Society of New York, and I hereby warrant said answers, as written, to be true and that I am the person described above and in Part I of this application, signed by me.

Person Examined, —— ——.

Witness:

—— ——,
Medical Examiner.

Dated this — day of ——, 190–.

In middle of back page is written in ink these words: "Also following app."
Policy No. 162,718.

Exam. Ins. Pol. Ins.

S. T. July 13.
T. D. I.

Amount $—.
Date of policy — day of ——, 190–.
Life of John Andrew Salgue.
Residence, ——.
Benefit of ——.
Relationship, ——.
Age, —, Date of birth ——, 18—.
Kind, ——.
Ann. Prem. $—, Form ——.
—— Equiv. $—.
Rem. ——.

Recommended for $10000.
Rec'd July 5, 1905.
(Gen'l Agent's card only.)
J. B. Nutting & Co.
Edition, April, 1905.

Med. Dept.
E. A. S., July 28, 1905.
Date, July 6, 1905.
Written 7/12/1905.

On the left hand side of this middle folder is printed, "These spaces are for the exclusive use of the Home Office, and must not be filled or used."

139 On the right hand side of this middle folder is printed, "These spaces are for the exclusive use of the Home Office, and must not be filled or used."

Instructions (Note Carefully.)

1. Classifications of Risks.—In giving an opinion on life, it is desirable that there should be a uniformity in the expressions used by examining physicians, to enable the Society to understand and

appreciate correctly the opinion they intend to convey. It is therefore suggested that there be expressions used for three grades of risks, as Class A, Class B, and Class C, or First-Class, Fair, Doubtful. Class A will embrace all those in good health, who have never had any illness of a character liable to impair the risk, of good physique, good habits and healthy avocations, and of whom there is no cause to suspect any hereditary predisposition to disease. Class B, those who cannot be placed in Class "A" on account of indifferent physique, history of past illness of a character liable to impair the risk, suspected though not well defined hereditary taint, etc., and yet in your opinion are entitled to some form of assurance. Class C will include those who, from any cause are regarded as not assurable—for example, those who have impaired health or distinct hereditary predisposition to pulmonary or other diseases, and those of intemperate habits, or whose environment or occupation *are* considered hazardous or unhealthful.

2. In reference to the personal use of liquors, such phrases as "temperate," "drink what I want to," "moderately," "occasionally," etc., give no real information, and are worthless for the purpose of this inquiry. The examiner should endeavor to arrive at some approximate idea of the daily habit and by pressing these questions delicately, yet seriously, secure a clear and definite statement on this point.

3. Let the physical examination be thorough and exhaustive, no matter how sound the subject may appear, nor how well you may know him. For this purpose insist upon such disrobing as in your discretion the circumstances of each case may require.

4. Should you decline to examine an applicant, do not fail to write the fact at once and confidentially to the Medical Directors, giving name, date of birth and the residence of subject, date of application, and reasons for disapproval. This courtesy will be appreciated.

140 5. It is important that the examiner should inform the Medical directors of anything unfavorable in the occupation or immediate environment of the applicant, such as the presence in the same household of an individual suffering from consumption or any other disease or conditions which would constitute a menace to the risk.

6. The medical examiners of this Society are selected and appointed exclusively by the Society's medical department through its own channels. Local agents have no concern whatever in the premises; neither in the procuring of the appointments, nor even in the making of original nominations for vacant examinerships, except by courtesy. Examiners will therefore understand that they are responsible to the medical department only.

For the defendant, The Prudential Insurance Company of America. ROBERT L. BURRAGE, testified by interrogatories as follows:

My name is Robert L. Burrage. My age 50 years. Residence, Newark, New Jersey. I have been medical examiner of the Prudential Insurance Company for 10 years, and the duties of my present

position in a general way consist in administering the medical affairs of the Company. The application of John Andrew Salgue was passed upon by me personally, and I approved the same, advising the Company to issue the insurance applied for. I have had an extensive *appearance* in medical life insurance work, running over a period considerably in excess of 20 years, first as an examiner and in various home office medical positions, assistant medical director, medical director, etc. I presume I am considered an expert in this business. My position would so indicate. I know the custom of life insurance companies in taking applications from parties applying for insurance and the custom in this respect of The Prudential Insurance Company. The object of taking applications by companies is to have distinctly shown a bona fide desire upon the part of an applicant to receive insurance and to obtain from him or her statements covering certain facts and conditions upon which to base the issue of an insurance contract. Insurance companies necessarily place reliance upon statements of applicants and their answers to the inquiries of an application, unless known or demonstrated to be unreliable, and The Prudential Insurance Company in this respect follows the general practice of the business. It is the custom of insurance companies to
141 have applicants for insurance examined by medical examiners holding the commission of the Company, and The Prudential Insurance Company follows this custom. Necessarily absolute reliance is placed upon such medical examination by insurance companies, and the statements and answers of applicants made therein, and this custom is also followed by the Prudential.

The object of life insurance companies in having medical examinations made upon applicants for insurance is to demonstrate whether from the standpoint of health, habits, personal health, history, physique, family history, and other material points, they are insurable under the rules of practice established by the company. And these are the objects in view by the Prudential Insurance Company in requiring its applicants for insurance to be examined. The Prudential does not consider the medical examination of an applicant as a part of the application of such applicant, but the application is never considered alone, but must have for consideration accompanying it the report of a medical examination by a commissioned medical examiner of the company, and it is a fact that its policy of insurance is issued in consideration of application and medical examination side by side. It is the policy of the Prudential in issuing its policy to base such issue upon facts, answers and warranties contained in the application and upon facts with relation to the insurability of an applicant from a medical standpoint in the report of medical examination. The concealment by applicants of material facts relating to health, habits, rejection by other companies, is liable to affect unfavorably the judgment of those passing upon applications, such concealment depriving the company of a full and free consideration of an application from every point of view; and concealment of the fact that other insurance is pending should be looked upon in precisely the same

light, depriving as it does the company of knowledge as to whether or not applicants in question are seeking over-insurance, or in any way perverting the legitimate function of an insurance transaction. These concealments have precisely the same effect so far as the Prudential is concerned as they would with other companies. J. A. Salgue did apply to the Prudential for insurance. His application and medical examination, the latter made by Dr. W. R. Winchester of Macon, Georgia, was submitted to me. I approved Salgue's application. My action in approving same was taken because of my opinion resulting from an examination of Salgue's application and the report of medical examiner, Dr. W. R. Winchester, that Salgue was under the rules and practice of the Prudential Insurance Company insurable upon the form and for the amount of insurance for which he applied. My approval is in the upper left-
142 hand corner of the original application. The application in question was considered in connection with report of medical examination above referred to before I approved it. The answers, statements, warranties, in the application and medical examination of John Andrew Salgue, made by the said Salgue to The Prudential Insurance Company, had the effect of causing me to approve his application. The policy of the Prudential Insurance Company upon Salgue would not have been issued unless I or some other medical officer of the company had approved the application. At the time this application was approved by me, I did not know, nor did the Prudential Insurance Company know, or have any information that Salgue in or about 1905 applied to the Penn Mutual Life Insurance Company through Anderson Clark, or that he had been examined for any insurance by Dr. W. J. Little of Macon, Georgia, or Dr. Little had informed Salgue that he had organic heart disease, having a mitral murmur and hypertrophy of the heart with faulty compensation, and that he could not approve his application. I would consider information under questions 4-*b* and 4-*c* of Salgue's application to the Prudential as decidedly material to the risk under consideration, or about to be assumed by the Prudential. The information in question would be material because it would have given the Prudential an opportunity to demonstrate whether or not in its judgment Salgue was a proper subject for insurance, and the concealment of this information deprived the Prudential of demonstrating whether or not under its rules of practice Salgue was a fit risk for insurance or the alternative, if not being able to do so, of declining the application. Neither I personally nor so far as I know any officer of the Prudential Insurance Company at the time of approving Salgue's application and issuing him his policy of insurance had any information that the said Salgue had on June 28, 1905, applied to the Sun Life Insurance Company of Canada for $6,000 of insurance. The Prudential Insurance Company asked question 4-*d* upon its application because it desires the information divulged by answer to this question, wishing to consider the matter of moral hazard, over insurance, and any other pertinent detail with reference to an application. If this man Salgue had an application pending in the Sun Life

Insurance Company at the time he made application to the Pr
dential Insurance Company and the fact had been stated in h
application to the Prudential Insurance Company, it would hav
in all probability had the effect of causing us to inquire furth
into the merits of his application. I have been practicing medicin
and serving in my present capacity for over 30 years. I consid
chronic gastritis a serious illness, and consider organic hea
143 disease a serious illness. If Salgue had in answer to que
tion 24 upon medical examination stated that he ha
chronic gastritis and heart disease it would have resulted in an
insurance company refusing the insurance.

Defendant, The Prudential Insurance Company, then introduce
the following application for insurance:

*Application for Insurance in the Prudential Insurance Company o
America.*

Approved 7/10/05. R. L. B.

No. 674,931.

Home Office, Newark, N. J., 1901.

E. K. H.

Acknowledge letter with pol.

1. *a.* What is your full name?
John Andrew Salgue (Salgue).
b. Where do you reside?
No. 1921, Street, South Macon, City, Macon, County, Bibb; State
Georgia.
c. What is your business address?
C/o Bibb Brick Co.
d. To what post office address are communications to be sent?
Macon, Ga.
2. *a.* Where were you born?
Gallipolis, Ohio.
b. When were you born?
Month, October; Day, 28th; Year, 1863.
c. Age nearest birth-day?
42 (43).
d. Are you married?
Yes.
e. Do you intend living or traveling outside the United States
(exclusive of its tropical possessions, and Alaska), Canada or
Europe? If yes, give particulars.
No.
3. *a.* What is your present occupation, kind of business, position
held and length of time so engaged?

Supt. Bibb Brick Co.

b. What other occupations, if any, have you followed, and how long in each?

None.

144 *c.* Do you intend changing your present occupation, if yes, state particulars?

No.

d. Are you now engaged in, or have you any intention of engaging directly or indirectly in the manufacture, sale or handling of malt, or spirituous liquors? Give full particulars.

No.

4. *a.* Are you now insured in this or any other company? Answer yes or no. If so give name of company, amount insured, and kind of policy held. If in this company, give number of policy also.

Yes; name of company, Prudential; No. 34305; amount, $1000; kind of policy, 20 yr.; End't bond. Mutual Life N. Y., $2000; kind of policy, 20 pay life.

4. *b.* Has any company or association ever declined to grant insurance on your life, or issued you a policy of a different kind or for a sum less than that applied for? Answer yes or no.

No.

c. If you give name of company or companies, and when.

d. Is an application for insurance on your life pending at this time in any company? If so give name of company.

Yes. Provident Savings Life.

5. *a.* What kind of policy is desired?

Whole life.

b. What is the dividend period?

Five years.

6. *a.* Sum to be insured?

$5000.00.

b. Is premium to be paid annually, semi-annually, or quarterly?

Annually.

c. What amount have you paid in advance or on account?

7. *a.* To whom is the insurance to be paid at your death?

My estate.

Full name: Relationship: Present residence:

b. Do you wish the privilege of changing the beneficiary at any time, if the policy or any interest therein be not then assigned? Yes or no, answer.

Yes.

145 I hereby declare and warrant that I am in good health and of sober and temperate habits, and that all the statements and answers to the above questions are complete and true, that the foregoing, together with this declaration, shall constitute the application and become a part of the contract for insurance hereby applied for.

And it is agreed that the policy herein applied for shall be accepted

subject to the privileges and provisions therein contained, an
policy shall not take effect until the same shall be issued a
livered by the said company, and the first premium paid t
in full, while my health is in the same condition as described i
application.

The applicant will please read answers written after each of
questions before signing.

Signature of the person whose life is to be insured:

(Signed) JOHN ANDREW SALG

Witness to signature:

(Signed) C. M. ADAMS.

Dated at Macon, Ga., this 6th day of July, 1905.

Be sure that every question is answered in legible writing
that the date of birth and age are correct.

To be filled in by general, or detached special agent.
Give date on which examination was ordered.—July 6, 19
Who secured the above application?—C. M. Adams, Ge
Agent C. M. Adams, located at Macon, Ga.

Received Jul- 8, 1905. Jul- 10, 1905.

For Home Office Use Only.

No. 674,931.
Name, John Andrew Salgue.
Kind, L.
Dividend period, 5 years.
Age, 42; amount, $5000.00.
Premium, $175.20.

Previous Insurance.

No. of policy, 343051, 674932; In force or can. F. kind,
Gar., 20-E; amount of policy, $1000; district, E. R. Black; app
tion written by C. M. Adams; amount of premium, $81.22; N
pay'ts made, 4 A; paid to, 4-1-06.
146 Letter.—Amend, etc., acknowledge letter att'y, only
pol. to be placed Dep. app. for correct sig. and age.
Remarks.—Optional with 674932 only one policy to be pla
For form 35 only.
Date, July 10, 1905. O. K. Made out by M. Checked by F.
Policy written by W. Form 35. M. H. W.
Application ex. for pol. E. M. Pol. Ex. 7-10.
P. R. M. & B. 7-10-G.
If this policy and 674932 are N. T. remit $2.50 Med. fee to
If only one is N. T., no charge.

Defendant, The Prudential Insurance Co., then introduced the following medical examination of J. A. Salgue for the Prudential Ins. Co.:

Declaration Made and Signed by the Applicant.

Copy Ex. B.

In the presence of the medical examiner of the Prudential Insurance Company of America:

1. What is your name?
John Andrew Salgue.
2. Residence?
1921 Second Street, South Macon, Ga.
3. Do you intend living or traveling out-side the United States (exclusive of its tropical possessions and Alaska), Canada or Europe? If yes, give particulars.
No.
4. What is your present occupation, kind of business, position held, and length of time so engaged?
About 5 years. Supt. Bibb. Brick Mfg. Co.
5. No you intend changing your present occupation?
No.
6. What other occupations have you followed, and how long in each?
Always brick yard work.
7. Have you ever been engaged in, or have you any
147 intention of engaging in the manufacture, sale or handling of malt or spirituous liquors?
No.
8. Date of birth?
Day, 28th; month, October; year, 1863.
9. Place of birth?
Gallipolis, Ohio.
10. Have you ever used malt or spirituous liquors to excess? If yes, give full information.
No.
11. State the quantity you use each day of malt liquors.—
Never drank any in my life.
Wines?—None.
Spirits?—None.
Nor used tobacco?—None.
12. Have you ever used opium?—No.
Chloral?—No.
Or any narcotic?—No.
13. Has your application for insurance ever been rejected, postponed or modified by an insurance company, assessment society, or benevolent order?
No.
When? ——.
By what company, society or order? ——.

Policy now pending with Provident Savings. Less than a week ago applied.

(Application Continued.)

14. Have you ever received a severe injury; when; nature of injury; how long disabled?
No.

15. Have you undergone a surgical operation; when; for what was operation performed; result?
No.

16. Are you in good health?
Yes.

148 17. When were you last attended by a physician?
Early spring of 1905.
For what complaint?
Bilious fever. (?) For two days.

18. Has your weight changed within one year? How much gain or loss? What cause?
Same for many years.

19. Have you ever sought or been advised to seek change of climate for your health?
No.

20. How long have you lived in city or town in which you now reside?
5 years.

21. Has either of your paternal or maternal grand-parents died of consumption, insanity, or any other heredity disease?
No.

22. Family Record.—Father, cause of death, don't know; age, Ab't 57; how long sick, don't know; previous health, good; mother, drowned; age, 42; how long sick, not at all; previous health, good; brothers (2), both accidentally killed; ages, 21 and 26; how long sick, not at all; previous health, good. Sisters (2), one, age 33, health, good; other cause of death, consumption; age, 26; sick three months; previous health, good.

The examiner will use this space to give full information concerning any declaration the applicant may make.

22. Father lived in Ohio and applicant was living in Philadelphia at the time of his death and only knows that his father (who lived in his house alone) was found dead. Sister took "cold" at a dance when in perfect health, and inside of three months was dead. One brother was killed by exploding boiler and the other from a falling trestle.

23. Have you ever had (answer yes or no to each)—Asthma, no; habitual cough, no; spitting of blood, no; dizziness, no; epilepsy, no; habitual headache, no; loss of consciousness, no; insanity, no; paralysis, no; persistent neuralgia, no; sunstroke, no; gout, no; acute rheumatism, no; chronic rheumatism, yes; palpitation of heart, no; syphilis, no; discharge from ear, no; chronic diarrhœa, no; kidney or bladder disease, no; renal or hepatic calculus, no;

istula, no; appendicitis, no; stricture, no; tumor or cancer, no; dyspepsia, no.

49 Questions to — answered if applicant is a woman ——.

I hereby warrant that the answers to these questions are rue, and agree that they shall form a part of the contract for insur nce applied for.

Dated this 6th day of July, 1905.

JOHN A. SALGUE,
Applicant's Signature.

Medical Examiner's Report.

A. By what means are you satisfied as to the identity of the party ou are about to examine?

Know him personally.

B. Were the answers recorded above made and signed by the pplicant in your presence?

Yes.

C. Do you believe that applicant is over that age given to you? yes, at what age would advise issue of policy?

No.

D. Have you reason to suspect intemperate habits, or if female, mmoral life?

No.

E. Have you any reason to doubt any statement made by appli- nt to you?

No.

F. Describe the duties of applicant's occupation, stating line of siness.

Manager of Brick Mfg. Co.

G. Race (white or colored)?

White.

H. Sex.

Male.

I. Is sight good?

Yes.

) J. Is hearing good?

Yes.

K. Is appearance healthy?

Healthy.

The following questions are to be answered only after a physical mination of applicant, and chemical examination of urine:

. Rate of pulse per minute?

76.

M. Does it intermit?—No.

rregular?—No.

N. Temperature (under tongue)?

98 3/5.

). Height?—5 ft. 8½ in.

Weight?—168 pounds.
P. Measurements of chest?—39.
Of waist?—36½.
Q. Do you find any indications of disease of heart or blood vessels? If yes, give particulars.
No.
R. Do you find any indications of disease of respiratory organs? If yes, give particulars.
No.
S. Do you find indications of disease of nervous system? If yes, give particulars.
No.
T. Do you find indications of disease of abdominal or pelvic organs? If yes, give particulars.
No.
U. Analysis of urine: Reaction?—Neutral.
Specific gravity?—1023.
Albumin?—None.
Sugar?—None.
151 V. Are you sure urine examined was passed by applicant?
Yes.
W. When did you make examination on which above report is based?
6th day of July, 1905.
X. Where was this examination made?
In my office.
Y. Do you find applicant free from physical and mental defect and in good health?
Yes.
Z. Is the risk first class, fair, average or poor?
First class.
This space is to be used for necessary remarks and for comment upon the moral hazard involved.
In the winter of 1898 had some pain (no swelling) in joints, more or less, for about three months—not laid up and followed his work—no return. V. s. g. little high from free perspiration—a very warm day. Moral hazard all right.
I certify that the above statements are true.
(Signed) W. R. WINCHESTER,
Medical Examiner, Macon, Ga.

To be filled in by the examiner:
Application received July 6, 1905; application and report mailed to home office July 6, 1905.

J. G. WILSON, sworn for the defendants, testified as follows:

Direct examination.

By Mr. BLACK:

In June, 1905, I was agent for the Provident Savings Life. Yes sir; I took that application of John Andrew Salgue in the Provident

Savings Life. Yes sir; the questions on this application were asked Mr. Salgue, and those answers were written on the application. Yes sir; this question was asked him: "Has any life insurance organization ever postponed, rejected or limited your application for insurance, or restoration of elapsed policy, full particulars required;" and he gave the answer, no, as indicated to it. Yes sir; this
152 question was asked him: "Are you negotiating for life insurance? If so, state in what organizations, and for what amount?" His answer was "No." Yes sir; the policy applied for under this application was issued. Yes sir; it was sent to me or to the general agent, Mr. Ross; Mr. Ross and myself went out to deliver the policy together. No sir; we did not deliver it; he refused to take the policy. No; he did not state for what reason, at the time, only said he was going to take out some more insurance, and he just didn't want it; that was all there was to it. No; he didn't give us any reasons for not taking our policy. No sir; I did not have a talk out at the Brick Company with anybody else besides Mr. Salgue. As to how I happened to write this insurance on Mr. Salgue, it was my sister or brother told me his wife told them Mr. Salgue was going to take out some insurance, and I went out there to see him.

Cross-examination.

By Mr. WIMBERLY:

As to whether I got out there on June 30th, the date of the application was the day. Yes sir; that was the time he told me he was not negotiating for any other insurance. I don't remember the date I went out there with the policy to deliver it. I can't remember how long it was after June 30th; Mr. Ross and I went together, Mr. H. C. Ross; he was the general agent; I was under his supervision. Yes sir, in order to be sure and write him, I took the general agent out there with me. As to whether I persuaded him to make the application, Mr. Ross did most of the talking. Yes sir; he finally gave the application. Yes sir; I then went out there with Mr. Ross, and tried to get him to take it. No; I don't remember that he told us that he didn't want it, he had written more insurance on him than he wanted, and he declined to take it; Mr. Ross is the man that tried to deliver the policy. Yes sir; I was along; I had only been in the insurance business a short time, and he was the man doing the soliciting. Yes sir; I know Mr. Ross tried to get him to take the policy, and he declined. No sir; he couldn't get him to take it. Yes sir; it was a policy for five thousand dollars. We offered it to him, and tried to get him to take it, and he would not take it. No sir; I did not take any more out than this; five thousand dollars was all that was written at that time. We only took out one policy. No sir; we didn't do like these others, take two policies; we only took one policy.

153 B. H. RAY, sworn for the defendants, testified as follows:

Direct examination.

By Judge MILLER:

Yes sir; I was soliciting agent for the Aetna Insurance Company in June and July, 1905. As to whether I wrote the policy upon the life of Mr. John A. Salgue, I wrote the application for insurance. Yes sir; it resulted in a policy. As to how I came to go to Mr. Salgue, on or about the 6th or 7th of July, Mr. W. E. Hawkins, Manager of the Aetna Insurance Company for Georgia, took the train at 8:15, going to Forsyth. On the train, I met Mr. John T. Moore and his wife. After talking to them in the ladies' car, Mr. Moore went in the smoker and I went in there where Mr. Hawkins was, and introduced Mr. Moore to Mr. Hawkins, and we naturally engaged in conversation about insurance. Mr. Moore says: "Bolivar, if you will go out to my brick plant, I will introduce you to Mr. Salgue, my superintendent, he is figuring on some insurance;" and I thanked him, and on the night of the 7th, Mr. Hawkins and I returned here, and on the morning of the 8th, I went out there and wrote him. Yes sir; this is the original application; this is my handwriting. Yes sir; I asked the questions, and wrote them, and I read them all over to Mr. Salgue, as I do in every case, usually. I read him those questions that are propounded, every question to him, and he answered them, and I put them down as he answered them. Yes sir; I asked Question 16: "Has any proposal or application to insure your life been made to any company, association or agent, on which a policy of insurance is now pending? or has any such proposal or application ever been made for which insurance has not been granted, or on which a policy or certificate of insurance was not issued for the full amount, and of the same kind as applied for? If so, state particulars, and the names of all such companies, associations or agents?" And I wrote the answer that is written there: "None." Yes sir; I read him question No. 18: "Has any company or association in which your life has ever been insured, or the agent thereof, expressed an opinion that the risk was undesirable, or refuse to reinstate any such insurance after it had lapsed? If so, state particulars, and the names of all such companies, associations or agents;" and wrote his answer to it. Yes sir; he answered "No." Yes sir; he answered the 19th question: "Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? If so, state particulars." Yes sir; I read question 17 to him: "What amounts are now insured on your
154 life, and in what companies or associations? If insured in this Company, state the number and amount of each and every policy." Yes sir; he answered two thousand dollars, Prudential, and two thousand dollars, Mutual Life, and I wrote it down. Yes sir; that is his signature to the application, witnessed by myself and Mr. Hawkins. Yes sir; those are our signatures.

Cross-examination.

By Mr. WIMBERLY:

When I wrote this application, Mr. John T. Moore, Mr. Salgue, who signed the application, Mr. W. E. Hawkins and myself, were in the office together. No one else was there, that I remember of. No sir; Mr. Woodruff was not there; I never met any gentleman by such a name. Mr. Hawkins was the State Manager. No sir: Mr. Hawkins didn't generally go with me when I wrote insurance: Mr. Hawkins goes with me a good many times on trips, not always, but he was with me on a three days' trip on that occasion, and we went out that day to the Bibb Brick Company. We had been over to Monroe County. I was out there one time in connection with this transaction. No sir; I was not out there when the policy was delivered; I never had anything to do with it after I took the application, and the settlement for it. Mr. Hawkins handled the matter from then on. No sir; it is not a fact that on this occasion, when I wrote this application, Mr. Salgue told me that he was thinking about taking out some insurance on his life, and would make the application with the understanding that after he saw the different policies, he could select those he wanted. Mr. Moore told me on the train Mr. Salgue was considering taking some insurance, and if I would go out there, he would introduce me to Mr. Salgue. I went out there, and Mr. Moore kindly introduced me to Mr. Salgue. I figured with him, and told him I could give him six thousand dollars non participating policy, and he made this remark: "That gives me six thousand dollars insurance, and Mr. Adams five thousand dollars, and there is little difference in my favor." I figured with him, and told him that there was $9.80, is my recollection, and then I took his application there. Mr. Adams was C. M. Adams, Manager for the Prudential. No sir; Mr. Salgue did not say that he had applied to Mr. Adams, but that mine was cheaper, and that he would apply to me, and if he liked mine as well he would take mine. I got a settlement for it then and there. When I was writing his application, Mr. Hawkins engaged in conversation with him, did he want to put his insurance in force as soon as the policy was issued, and he said he did. He said: "Ray, you draw the note; I will draw the binding receipt." I was sitting at the table where I was doing the writing of this application, then took a settlement for it, and Mr. Hawkins drew the binding receipt on Mr. Moore's desk, and that was the last of my connection with it. The note was payable to W. E. Hawkins. As to what occurred at that time, I wrote Mr. Salgue that six thousand dollars insurance in good faith, I thought he bought it in good faith, and he paid for it in good faith. That was the last I had to do with it. There was no thinking about it with me. I don't know what he thought. As to why it was, when I knew he had applied for five thousand dollars to Mr. Adams' Company, I did not make mention of that fact when I filled out his answer, he did not tell me he had applied to Mr. Adams; he said my figures on six thousand dollars was a little cheaper than Mr. Adams' on five thousand dollars. It

was a participating policy. As to whether I said just now that he told me he had applied to Mr. Adams, the way I intended it was that he was figuring with Mr. Adams. No sir; it is not a fact that, in answer to this application about having made application and no physician expressed an unfavorable opinion, that Mr. Salgue said to me: "Dr. Little says I have got heart disease, but I don't believe I have got it, and that he struck his muscle on his arm, and said: "I am a perfectly sound man," or words to that effect. No sir; I didn't say: "That can be very easily settled, I will get the Company's physician, and he will say." I never engaged in any conversation with him about that; Mr. Hawkins did; Mr. Salgue remarked, something was said, I don't remember that he named any physician, someone said he had heart trouble, Mr. Hawkins said that was a matter for the physician to pass upon. That conversation occurred in my presence. I had written the application at the time, and had telephoned for Dr. Barron, I could not reach Dr. Barron, and then I telephoned for Dr. Harrold; I did not know Dr. Harrold was appointed until that morning. Yes sir; I had written it at the time, but I was still there with him, with it in my hand. Yes sir; Mr. Hawkins was with me. I never left the office with that application, at all. When I took the application, I turned it over to Dr. Harrold in the presence of Mr. Salgue, and he concluded his part of it there. Mr. Hawkins and I went there when Mr. Salgue said someone said he had heart trouble; he didn't say Dr. Little. Yes sir; Mr. Hawkins said that was a matter for the physician. That was the only thing that occurred in my presence about it. Yes sir; Mr. Hawkins, to whom that was said, is State Manager of that Company. That conversation occurred right there, after I had taken the application.

156 (Following the application of John Andrew Salgue, language below):

(Form No. 66).
(Ed. of Jan., 1901).

Questions to be Answered by the Agent Who Secures the Above Application.

1. How long have you known the above named applicant for insurance?
Short time.
2. Have you made such investigation as will enable you to answer the following questions correctly? (If not, this certificate should not be made until such investigation has been completed).
Yes.
3. Is the applicant a total abstainer from the use of both malt and spirituous liquors?
Yes.
4. If not a total abstainer, state what kind of stimulants the applicant generally uses, how often and in what quantity. (In

answering Question No. 1, avoid the use of general terms, such as "occasionally," "temperate," "moderately," "seldom," etc. If the question cannot be answered definitely, state an amount and frequency which he does not exceed).

5. Has the applicant ever been intemperate or ever been accustomed to drink more freely than as above stated?

No.

6. Is the applicant able to continue payments of premium on the policy herein applied for, and on all other life insurance policies on the same life?

Yes.

7. Have you reason to believe that all the statements and answers in the accompanying application are correct and complete, and do you recommend this applicant to the Company as a first-class risk for any kind of policy?

Yes.

Dated at Macon, Ga., this 8 day of July, 1905.

(Agent's Signature) W. E. HAWKINS.

(Agent is licensed.)

W.

157 Examination must be made by the regularly appointed physician of the Aetna Life Insurance Company.

The medical examiner is requested to be very minute in his examination to answer each question fully, and to write the result of the examination himself. During the examination neither the agent nor any third person should be present.

Examination of Mr. John Andrew Salgue.

Examined at Macon, Ga., the 8th day of July, 1905.

1. How long have you known this applicant?

One day.

2. General appearance and apparent age?

39. Race, white.

3. State the height?

5 ft., 8½ in.

Weight?

167.

Chest measurement on full inspiration?

40 in.

Chest measurement at forced expiration?

36 in.

Measure of abdomen?

35 in.

4. Are there or have there ever been any signs of apoplexy, paralysis, epilepsy, insanity, or any nervous affection or pre-disposition thereto?

No.

5. Has the applicant ever had scrofula, rheumatism, gout, or dropsy?

Rheumatism, as above.

6. What is the character of the respiration? Is it full, easy, gentle, regular, healthy, and to be heard over both lungs?
Full and easy and free. O. K.
7. Has the applicant a cough, occasional or habitual or occasional or uniform difficulty in breathing?
No.
158 8. Is the heart's action uniform, free and unobstructed, and has it always been so?
Yes.
9. Does auscultation indicate enlargement or disease of the heart of any kind?
No.
10. State the rate and other qualities of the pulse?
Good force—76 in minute.
11. Does percussion or auscultation indicate disease in any part of the viscera of the chest?
No.
12. Is there any abdominal disease externally or internally? Have any of the abdominal viscera been diseased?
No—save.
13. Has the applicant any bodily malformation, lost a limb or suffered from mechanical injury, or disease of any kind?
No.
14. Is there rupture? In your opinion is a truss necessary?
Yes—Truss not necessary, but is worn.
15. Is there any impairment of sight or hearing?
No.
16. Is there evidence of successful vaccination?
Yes.

An examination of the urine is necessary in every case, and the urine must be passed in the presence of the medical examiner, except that if the applicant is a woman, examiner may certify that he is satisfied the specimen is genuine.

1. Was the urine examined passed by the applicant in your presence?
Yes.
2 What date was it passed?
July 8th, 1905.
159 3. Color?
Straw.
Acid or alkaline?
Alkaline.
Specific gravity?
1024.
4. Albumen?
No.
Sugar?
No.
5. Does the applicant rise at night to urinate?
No.
6. Are the functions of the kidney and bladder healthy?
Yes.

17. Has the applicant during the past five years, lived in the same house with any one suffering from consumption? If so, state the particulars.
No.
18. As a result of your examination, do you believe that this applicant is an habitual user of any form of alcoholic stimulants?
No.
19. Opinion of life, and prospect of longevity?
Excellent.
20. Do you consider the applicant safely insurable?
Yes.
21. What is the amount of insurance now applied for?
Six thousand.

CHARLES HARROLD, M. D.,
Examining Physician.

Physician—Where graduated—College of Physician and Surgeons.
When graduated—1902.
27. Sister who died of phthisis did not live in same house as brother for three years preceeding her death, which was about '98. She then lived in Philadelphia; was in perfect health until
160 three months before her death. Living sister in good health—married and has several children.
14. Regarding his hernias left extremely right—only observed after marked intentional cough or strain; right slightly larger on coughing but does not form external ring. Truss not necessary but worn.

C. C. HARROLD, M. D.

W. E. HAWKINS, sworn for the defendants, testified as follows:

Direct examination.

By Judge MILLER:

In 1905, I was State Manager of the Aetna Insurance Company. Yes sir; I was present on July 8th, when this application was filled out by Mr. Ray for Mr. John A. Salgue. As to what time of day that was, I think we left the Brown house about nine o'clock in the morning, and went out between nine and ten o'clock when we got there. Yes sir; it was between nine and ten o'clock when we got to the Brick Company's office. Yes sir; the conversation took place in the office. As to what time I think Dr. Harrold got out there, I am sure we were there about an hour before he came, probably an hour or a little more; he was telephoned for, and came out in a few minutes. Yes sir; this is my signature; this application was filled out by Mr. Ray. I filled out the second part, "Questions to be answered by the agent," Form No. 66, at the bottom there. Yes sir; that is my signature at the bottom there. Yes sir; I have examined this paper before. As to the conversation that occurred between Mr. Salgue and myself, I only had a very little conversation with Mr. Salgue. Mr. Ray did most of the talking

to him. About the first thing I said to him when the application had been written, I asked him if he wished to put the insurance in force as soon as the policy was issued; I explained to him how it could be done, and he stated he did, and I requested Mr. Ray to write out the note while I wrote what is known as a binding receipt, that is, as soon as the policy is issued at the Home Office, it is in full force. And that was about all that was said. As to what he answered, he said yes sir, he wanted to put it in full force, and he signed the note, and I handed him the binding receipt, and explained to him what it meant, after the policy was issued, that was the same as the policy until received by him, and requested him to put it in his insurance papers. As to his statement, if any, concerning the previous condition of his health, when this matter was closed up, as I remember, he stated that one doctor said to him he had heart trouble, and I told him I was not competent
161 to pass on that question, our Examiner could tell him more about that than I could, and it was left with him. Yes sir, that was the substance of what passed on that answer. Yes sir, this paper is practically a copy of the binding receipt, except one point I am not sure of; when I took his note, it was practically a cash settlement. Mr. John T. Moore said he would send me a check on the Company as soon as the policy was received, so we took the note due a few days after that day. I think it was due thirty days from date; I don't remember exactly about that; it was only a short time note. The note was originally given for $175.80, but after returning to Atlanta, and after looking at his age, we found him to be a year younger, and we made that correction, so the final premium was $169.00 and something, I believe. As to what became of the note, I took it back to Atlanta with me, and on July 20th, mailed it to Mr. John T. Moore, together with the policy, and requested him to deliver this policy and let me have a remittance for the note, which he did remit to me on August 1st. Yes sir; I got the money from Mr. Moore; the check, I think, was signed by the Bibb Brick Company, by the President, and the letter was written by him individually. As to whether I delivered the policy to him, I mailed it to Mr. John T. Moore. Yes sir; the binding receipt was left with Mr. Salgue. As to whether his note was returned when it was paid I mailed the note to Mr. Moore with the policy; he was acting in the capacity, we treated him as a collecting agency Yes sir; we sent the note and got a check for it. No sir; I have never seen the note since. As to the value of that binding receipt to Mr. Salgue, the receipt was dated July 8th, but the policy was not issued until July 15th, and the conditions of that receipt are that the policy shall go into force immediately upon being issued, which was July 15th; had any accident happened to him, and he been killed between that date and the time he received the policy, July 21st, it would have been in full force. That is what the binding receipt means; the man is given a settlement in advance; the policy goes into effect as soon as it is approved and issued at the Home Office. As to what the relation of Mr. Salgue to the Company would have been if the policy had been issued at the Home Office, and

there had been for some reason a delay of some weeks, he would have been fully insured from the date of the policy at the Home Office.

Cross-examination.

By Mr. WIMBERLY:

At that time, I was State Manager for Georgia for the Aetna Life Insurance Company. Yes sir; I was State Manager at the
162 time of this transaction. I have been State Manager seven or eight years, seven years, I believe. Yes sir; I did, as Manager of the Aetna Life Insurance Company, write Mr. Salgue this letter dated August 2d. Yes sir; at the time this application was written, I was present. No sir; I did not pay any special attention to the answers made by Mr. Salgue to Mr. Ray; I merely attested his signature, and saw him sign it. Occasionally, I as Manager, go with the agent that writes insurance. Yes sir; I go with the agent occasionally to assist him in landing the insurance, when I think there is going to be difficulty in cutting out some other company trying to get a man. As to whether I knew, in this particular case, that there were a number of life insurance companies after Mr. Salgue, to write insurance on his life, he mentioned that several had approached him for insurance. As to whether he said he had made application to several, and he was willing to make application to us, and let him decide when they got there which he wanted, he said so in the beginning; we did not close it that way, though; that was not his conclusion in the end. He did not say in the beginning that he had made application, but that he was figuring; several had approached him, he said. As to whether he said he had made application to them, and he would make application to us and then decide when he got the policies which he liked, he asked us if we were willing to do that, and we went on to explain our policy. He asked us whether we would be willing to bring out our policy on those conditions, on the condition that it would be decided on after they were all issued, and I told him we preferred to have the matter settled while we were issuing it, we had confidence enough in our policy, that it would be just as represented in every way. We did not finally, after he asked us if we were willing to do that, wind up by giving him a binding receipt and taking his note, until he had said positively that he would take our policy. As to whether it is usual, in cases we call a cash settlement where the money is paid, in delivering the policy to take a note, or, at the time of issuing the binding receipt for the party to give us a check, we have to do both ways; we expect the cash on the delivery of the policy; we usually take the note so as to have ten or twenty days; occasionally, it is on delivery of the policy. As to whether we usually take a check where it is a cash settlement, we nearly always take a short time note, ten or fifteen days, which is simply to close the matter. No sir; between the time Mr. Salgue applied and the time the Company might pass on it, whether it was a week or a month, he had no

insurance. No; he was not bound all the time to take it,
163 unless the Company issued it. No; he had no way of getting out if the policy was issued; that was given with the idea if the policy was issued. As to whether it was the Company's option, and not his option, it was always the Company's option to decide on the application. As to how long it was before I received the check, when I sent the policy out to Mr. Moore with the note, I received the check on August 2d. I mailed it to Mr. Moore on July 19th; I addressed the letter to John T. Holmes, through mistake; I discovered that on July 20th, and I wrote him that I had requested the post office to hand him that letter, and at the same time handed him Mr. Salgue's note. I do not recall getting but one letter from Mr. Moore; that was the letter enclosing the check. Yes sir; I have got the letter. Yes sir; I will let you see it. Yes sir; it was on receipt of this letter that I wrote the letter to Mr. Salgue, that letter of 8 and 2. I do not recall a letter before that from Mr. Moore to me; I have no record of it. No sir; if there was such a letter written, I haven't it now; if I ever received it, I do not recall it, and I haven't it in my files. No sir; Mr. Salgue did not tell me who the doctor was that had told him he had heart disease, at the time this insurance was written. No sir; I did not ask him who the doctor was. We frequently have men tell us this fellow thinks he has kidney trouble, and unless he impresses it strongly on our minds, we turn him over to the doctor. As to whether we pay very little attention to what men tell us about heart trouble and things of that sort, and that is a thing the physician can tell, if he says he has had such things and says doctors have treated him, then we ask more specifically about it. No sir; I did not hear Mr. Salgue when he told Mr. Bolivar Ray, at the time this application was written, that Dr. Little refused to pass him because he had heart disease. I was there when Dr. Harrold came in, and he took him into the adjoining room, where he made the physical examination. No; it is not true that, when Dr. Harrold arrived, Mr. Salgue told Dr. Harrold that Dr. Little had refused to pass him because he had heart disease, and Dr. Harrold said: "I will settle that right now." He did not mention Dr. Little's name. The only thing, I think we both called Dr. Harrold's attenion to the fact that someone said he had heart trouble; yes, sir; that a doctor said he had heart trouble. No; I don't think Dr. Harrold asked him what doctor it was. As to whether Dr. Harrold said, when he told him that: "I will settle that by examining him," I don't remember the words, that he would look into it and find out what the trouble was. As to whether Dr. Harrold said, when he got through examining him: "I will stake my professional reputation as a doctor on his not having heart disease," I don't recall the doctor's exact language, but he said
164 when he came out he found no trouble with his heart. Yes sir; I knew Dr. Harrold; I was raised in the same town with him, in Americus. As to whether I know that there is no more competent physician in the State than Dr. Harrold, I regard him very highly.

By Judge MILLER:

Yes sir; this is the same form of binding receipt we were using at the time we took Mr. Salgue's application. As to whether there are any changes between the paper I hold in my hand and the original receipt, I am positive about the part filled in, except the due date of the note, whether that was ten days or thirty days. We did not recall the receipt after the issue of the policy; there is no value after that.

Dr. C. C. HARROLD, sworn for the defendants, testified as follows:

Direct examination.

By Judge MILLER:

As to the extent of my professional equipment, how long I studied medicine, and what I have done since, I studied at the P. & S. New York, physician and surgeon, and was in the hospital there for eighteen months. I came here a few months after that, and have been here since May, 1904. Yes, sir; I have been in actual general practice in the hospital and in the City of Macon since 1902. No; I am not a specialist. Yes, sir; I was one of the medical examiners for the Aetna Company in 1905. Yes, sir; I examined Mr. John A. Salgue. As to the time of day, it was in the forenoon; I do not remember the exact time; I know it was before lunch, and it was in the heat of the day. Yes, sir; I was called down there. The examination took place in the two offices of the brick company, the first part of the examination in the front office, and the physical in the room in the back. Yes, sir; this is Salgue's signature, signed to this sheet. Yes, sir; it was signed in my presence; I witnessed it. Above his signature, that represents the questions asked by me of the witness, and the answers written down by me. Yes, sir; the questions were actually asked and the answers written down. No, sir; there was no general conversation, and then I wrote out the answers; each question was asked and the answer written separately. As to whether I asked Question No. 21, "Have you ever had any of the following diseases? Answer yes or no, opposite each; if yes, state the date, duration and severity of illness," and after naming a number, among them is "Disease of the heart," and to that question got the answer, "No;" I asked the question, and then there was a discussion after the question, and then at the end of it I put the answer, "No." As to what the discussion was, I asked him if he had heart disease, and he said he thought he did not; he had been told he had, but he had no symptoms of heart disease and he thought he did not have it. I went into it closely with him and asked him the symptoms a person would have who had heart disease; he said he had none of them and he had never been treated for heart trouble, so I then put down that answer, "No," and then went into the physical examination later on. As to whether I asked him in the course of that conversation the names of the doctors that had told him, he told me either Dr. Winchester or Dr. Little. I don't remember which he said—one of those doctors

told him he had heart disease and scared him so, and the other one told him he did not have heart disease nor any signs of it. Those were the two he mentioned—Dr. Little and Dr. Winchester; I do not remember which he said told him he had it and which did not. No; he did not name McAfee. As to whether the date on this paper is correct—8th day of July—that is in my handwriting; I suppose it is the proper date; I don't remember the date. I would not know whether the date of this examination and these answers was the 8th day of July, 1905, except for the fact that it is written there; I think it is right; it is in my handwriting. Yes, sir; my recollection is that I asked him the 24th question, "Have you had, during the last seven years, any disease or severe sickness? If so, state the particulars of each case, and the name of the attending physician," and got the answer, "No." Yes, sir; that is my handwriting; I asked him and he answered, "No." Yes, sir; the lower list of questions are questions addressed to me by the company and answered by me—the physical examination. Yes, sir; the heading, "Examination of Mr. John Andrew Salgue, examined at Macon, Ga., July 8, 1905," is all in my writing and signed by me. Yes, sir; I wrote the answer, "Excellent," to No. 19 in my statement as Examiner, in reply to the question, opinion of the life and prospect of longevity. Yes, sir; I answered, "Yes," to Question 20, "Do you consider the applicant safely insurable?" As to whether in the conversation between Mr. Salgue and myself, he mentioned only two doctors—Dr. Winchester and Dr. Little; I am under the impression he mentioned Dr. Ross as having treated him for something a number of years previously. As to whether that was the malarial attack, I have forgotten which it was; he said he had completely recovered. No, sir; I have not looked carefully over the previous report. As to whether I did at the time read that where Dr. Ross's name appears, I very often do not look over the previous paper at all; I don't think I did. As to whether, in our conversation, he referred to Dr.
166 Ross as having treated him for any serious trouble, my recollection is he referred to Dr. Ross as having treated him for something several [years] previous, but he had completely recovered. Yes, sir; I am sure that, as to the other two men, one told him he had heart trouble and he went to the other and he told him he did not; I don't know that he went at once; he went because he was frightened. No, sir; he did not say the same day. No; I can't recall which one told him he had heart trouble and which one told him he did not. Yes, sir; after the talk with Salgue about the alleged heart trouble, and after this about the serious diseases, to which he answered "No," when I completed the writing of his answers, I then took him into the back room to make the physical examination. As to what that physical examination consisted of, how I prepared him, I stripped him to the waist, yes sir, shirt and all, stripped him to the waist and went through the regular form that is laid down in the application there. I don't remember which comes first, the counting of the pulse, or the respiration or taking his measurement. First comes his apparent age; I looked at him and judged that; then comes his measurements; I took those and asked him what his weight was; I did not have any scales there, and a

long list of questions here concerning the appearance of the person. I asked him about those, and then comes the examination of the heart, which I made with the stethoscope, listening to the action of the heart and listening to his breathing. I went through all of those, and then the rate of his pulse. The question is asked, if I found anything wrong with his chest. I answered, "No." And then the question about the abdomen. I made an examination of him and found he had a double hernia; he was wearing a truss. As to how thoroughly the heart examination was made and what conclusion I reached about it, I went through it as carefully as I could, and found there was nothing wrong. I examined him first with my stethoscope, listening to the action of the heart. I remember the light was not very good in the room, and I carried him over to the window. I remember there was a box by the window, so I could not get close to it, and he moved the box to the other side of the room so I could get near the window, and I examined him there with plenty of light as carefully as I could. My recollection is, the room was about eighteen or twenty feet square. And I found nothing wrong with his heart, with its action, and I did not find any murmurs, and I did not find it was displaced; I did not find his pulse was too rapid; I found nothing wrong with his heart. As to whether it is possible that a man can be examined one day for trouble of that character, a mitral murmur, and it be distinctly apparent today, and at another time it would not be detected, it should be apparent; it can be much more apparent at one
167 time than another, but if the murmur is due to a lesion of the valves, then it should be apparent at all times; if the murmur is due to a weakening of the heart muscle, then it may be very well apparent at one time and not apparent at another, or if the murmur is due to anemia, if the anemia is clogged up, then the murmur should cease. As to whether, under the conditions stated, it might be apparent and without those conditions it would not be apparent, if it is a valvular trouble, a distinct valvular lesion, it should be apparent at all times, but more apparent some time than others.

By the COURT:

No, sir; a mitral murmur does not necessarily result from a lesion of the valves; it can result from a weakness of the heart muscles.

By Judge MILLER:

My impression is that term "Mitral murmur" is from the cardinal's hat—it looks like a cardinal's hat; I believe it is a bishop and not a cardinal. No, sir; I did not, during the conversation with Mr. Salgue either in or out of the office or in the room, as to the condition of his heart or his previous health, get any information from him or impression from him that he had applied for life insurance and been turned down. No, sir; he did not tell me that his information the doctors had given him and which he conveyed to me, was while he was being examined for life insurance. No, sir; I do not remember his mentioning the time at all when

those things had been said to him. As to whether, when he mentioned Dr. Little's name, anything was said about Little being examiner for the Penn Mutual, nothing was said about the doctors with reference to insurance at all. No sir; no allusion was made by him to the continuous treatment for several months by Dr. McAfee; he never mentioned Dr. McAfee's name at all to me. No, sir; he didn't mention any continuous treatment by any doctor. As to whether there was any reference to any treatment other than the slight treatment by Dr. James Ross, he mentioned sub-acute rheumatism, as having had sub-acute rheumatism several years before, from which he had completely recovered. I do not remember who the doctor was.

This question is, "Have you had inflammatory rheumatism? If so, when, and how often?" The answer is, "Light sub-acute attack several years ago; no return." I don't remember what he said about the doctors, if anything at all. I don't remember whether he said whether he had any treatment for it; he said he had no return of it. His appearance was that of a very strong and physically perfect man, quite well developed. Yes, sir; he had a deep chest.

168 Yes, sir; a man could have that appearance and with that appearance have an organic disease of the heart that would escape attention, the beginning of an organic disease of the heart. Understand me, I said before I think it should not have escaped attention, but it could do it. Yes, sir; with all of his appearance, he might have an organic affection of the heart which would necessarily result fatally in later years and that escape attention, if he lived long enough for it to kill him. Yes, sir; he could have an affection from which he could not recover. No, sir; if I had known at the time that I signed at the bottom of the sheet that I considered the applicant safely insurable, that he had been treated by Dr. McAfee for chronic gastritis from January up to the date of my examination, which treatment required the washing out of his stomach, and constant calls, either by the patient on the doctor or the doctor at the paient's house during that period of time, I would not have recommended him. Yes, sir; I would term that condition you have described of chronic gastritis as treated by Dr. McAfee, a condition from which a man suffers. No, sir; if I had known at the same date that before the 19th of June, 1905, Dr. W. J. Little had examined this man for the Penn Mutual for the purpose of insurance in that company and turned him down, refused to recommend him as an insurable risk because of the condition of his heart, I would not have recommended him for insurance in the shape I recommended him there; I would have recommended that he be held up and watched. No; I would not have inquired of Dr. Little about it; I would have reported the fact to the home office and gotten them to inquire, or advised them to inquire. Question 24 is, "Have you had during the last seven years any disease or severe sickness? If so, state the particulars of each case and the name of the attending physician." He answered "No." Question 23 is, "Are you subject to dyspepsia, dysentery or diarrhœa?" It is there answered, "No." Yes, sir; I did, in fact, ask the question and get that answer; I would not have writ-

ten it down if I had not. As to the relation that chronic gastritis would bear to the term "Dyspepsia" there, dyspepsia is a term that is used among laymen; it may have some gastritis trouble accompanied with pain; the term means painful digestion; it is very unusual with men who have chronic gastritis without some pain. Yes, sir; a layman being treated for chronic gastritis would be apt to call it dyspepsia. I think the doctor would have told him what he had, if he told the doctor he had dyspepsia, but in speaking to an acquaintance or other outside people, he would probably allude to it as dyspepsia, because that was the symptom bothering him most.

169 Chronic gastritis is one symptom of dyspepsia, the pain in the stomach during digestion; that is what the word means, painful digestion; painful digestion in the stomach is dyspepsia. Yes, sir; he answered "No" to that question.

Cross-examination.

By Mr. WIMBERLY:

Gastritis is inflammation of the stomach wall. Yes, sir; it may be caused from a variety of causes. Yes, sir; it may be simple and harmless, and may be the result of some very serious and dangerous condition. As to whether, when I say I could not pass a man who had chronic gastritis for six months, I base it upon the idea, without further inquiry, it may be one of the troubles of a serious kind, if it continued six months, it would be most sure to be. As to whether a man might have some comparatively slight stomach trouble that did not interfere with his work at all, about which he would talk to his physician several times in January and then skip consulting the physician until some time in March because he was not suffering during that time, and then at intervals along he might be treated, and yet there might be nothing but a curable form of gastritis and the man might not have any incurable disorder; some forms of chronic gastritis are curable. Yes, sir; the physician attending it should know better whether it was curable than a physician who had not followed that particular case. No; gastritis is not the same thing as dyspepsia; one is the symptom and the other the disease. As to whether dyspepsia is wide enough to embrace quite a number of troubles, some of which would result from gas of the stomach, dyspepsia means painful digestion in the stomach. I can't think of any type of gastritis a man could have without some pain. As to whether, if a man was to have that vigorous kind of digestion that the doctor in charge said he had too much digestion, his digestion was too good, and it required that they should run water through his stomach and wash him out to tone down his digestion, there would be any dyspepsia about that, I have never seen a case without pain. I don't kknow of any form of gastritis that requires a person to have his stomach washed out every day or two and yet is not serious enough to keep him from doing vigorous muscular work twelve or fifteen hours every day, or from missing an hour from work, or missing a meal during the time, or which does not affect his health at all, or prevent him from eating or working, and that the only effect of the gastritis is that the doctor should wash his

stomach out and use electricity. As to whether gastritis seriou
enough to require all that washing out would affect a man'
170 vigor and strength and his ability to work, I don't know
what you mean by requiring to be washed out; I don't know
what symptoms he had at all. The symptoms that require a man
to be washed out for gastritis are generally stagnation of food, and
sometimes accumulation of gas. No, sir; if he did not stagnate
but digested too good, I would not wash him out. As to whether
if a man digests his food too thoroughly, the accepted course of
treatment by the medical fraternity is to run water through a man
of that sort, I don't know of it if it is. I don't think he said Dr.
Little, or one of the doctors, told him he had heart disease; trouble
is the word, is my recollection. Yes, sir; after he told me that, I
made as thorough an examination as I could. Yes, sir; the fact that
of those two doctors, both of whom I know, one told him he had
heart trouble, would of itself have made me more careful in exam-
ining. Yes, sir; I was as careful as I knew how to be. Yes, sir;
I used not only my natural organs of hearing, but aided my ear
by the use of an instrument called a stethoscope. A stethoscope is
a short distance telephone it is an instrument with two tubes which
go into each ear, and they come together in a rubber mouthpiece,
so you can put the mouthpiece against the chest and it conveys the
sound directly to the ear without letting in any outside sound at all.
Yes; I think that greatly increases the power of the ear in following
closely those sounds. No, sir; I did not find any mitral murmur
with the use of the stethoscope. As to whether, if there had been a
mitral murmur and a heart that was hypertrophied and the valves
had been so as to bring the apex of the heart around on the wrong
side of the nipple, I think I would have discovered that by the use
of the stethoscope and the care I took. I can answer part of your
question: The hypertrophy does not cause the murmur; if the mur-
mur had been there, I should have recognized it. Yes, sir, if there
had been a hypertrophy there, I should have recognized it. Yes, sir;
if there had been a displacement on the wrong side of the nipple,
I should have recognized that. No, sir; if the apex of his heart was
to the right of the nipple, that would not indicate heart disease,
unless it was very much to the right. As to whether, if there had
been a mitral murmur existing, as the result, not of anemia, but
of organic disease of the heart, that had been discovered by a physi-
cian as much as three weeks before that, from the 15th of June to
the 8th of July, I ought to have discovered that by the use of the
stethoscope on July 8th, I answered just now, that I should have.
No, sir; I discovered no anemia in Mr. Salgue's case; if there was,
it was not profound. Yes, sir; he had every appearance of an ex-
ceptionally vigorous man. No, sir; there wasn't anything in the ap-
pearance or vigor of the man to indicate a weakening of the
171 heart muscle; a man may have weakened heart muscles with-
out it showing in his general appearance. Yes, sir; it should
show that when you examined the breathing, and the pulse, and the
sound of the heart. As to whether the box that was over there by
the window with watermelons in it was a heavy box, my recollec-

tion is it was; my recollection is it had watermelons in it, and I offered to help move the box, and he said no, he could move it. Yes, sir; he did move it like a very strong and vigorous man.

By the COURT:

No, sir; I do not remember how many watermelons were in it. The box was not as large as the shoe packing boxes, about the average-size box we see around country homes with wood in them. I don't remember whether he picked it up or not, except he moved it very easily; I remember commenting on it, and offered to help him, and he said no, he could move it across. The natural result would be to put an extra strain on the heart. The effect of that sudden exertion upon the heart would have been to increase the rapidity of the heart action and the force of the heart action and put an extra strain upon the heart. Yes, sir; that would have tended to increase the distinctness of this mitral murmur if there was such a murmur. I applied the stethoscope immediately after that. Yes, sir; that is a binaural stethoscope. I don't think that increases the power of hearing so much as it shuts out all other sounds and directs all the sounds from that one point just to the ear. The stethoscope I used is not a magnifying stethoscope. Yes, sir; it is a concentrating stethoscope, in that it shuts out all other sounds. No, sir; I did not discover any murmur in applying that stethoscope. As to what other test of the heart I made at that time, I felt the pulse, and my recollection is I thumped with my fingers to see if the heart was enlarged; I examined the pulse of the applicant, and also pressed the chest with my fingers to see if there were any signs of enlargement of the heart. No, sir; I did not discover any.

By Mr. BLACK:

Yes, sir; I think it would be unusual, in chronic acid gastritis, as it is termed, for the physician to wash the patient's stomach out. As to whether there are a great many doctors who use that kind of treatment for that kind of stomach trouble, I don't know of them. Yes, sir; I know of Dr. Johnson, in Atlanta. No; I don't know that he uses that kind of treatment. Yes, sir; chronic acid gastritis is caused by an excessive amount of gas in the stomach. Yes,
172 sir; any treatment any physician would use would be aimed to get rid of that acid, and to prevent its coming. Yes, sir; one doctor might use one form, and another doctor might use another; there are a number of methods of treatment.

By the COURT:

As to what the effect would probably be on a patient, of chronic acid gastr-tis lasting for six or eight months, requiring constant treatment, if the treatment corrects the trouble, I do not see that there would be much *affect* from it; if the treatment corrects the condition as it arises each time, I do not see that the patient would necessarily waste from the disease, or that it would have any detrimental effect on him. As to whether, if this treatment superinduces the necessity of his withdrawing the food from him, or flushing his

stomach by mechanical means used by scientists, that would with
draw from him the strength that would result from proper nutr
tion, that much of it, if the food is withdrawn, of course he does no
get that food. As to the effect on his system, if it was necessary t
withdraw a portion of the food from the stomach, undigested food
or fermented food, I think it would depend entirely on the portion
of food withdrawn, and whether the man got enough food that wa
not withdrawn, as to whether he would waste. Yes, sir; I have seen
this operation of pumping out the stomach for chronic acid gastritis
flushing it out that way. We generally siphon it out by introducing
a tube into the stomach and then filling the stomach with water and
mashing the outside end of the tube, and the contents siphon out.
As to whether it is an operation which induces animated conversa-
tion on the part of the patient while it is going on, he generally
grunts. No, sir; he does not betray any great loquacity, as a rule.

By Judge MILLER:

No; they can't talk; they generally make signs; it would be very
hard to talk with the tube in the mouth; they can grunt and gen-
erally make signs with the hands. As to whether it is practicable,
in treating chronic gastritis, to allow the digestion to go on until
the man has digested enough food, and then wash out the stomach,
and it would bring out what remained, not digested, it will bring out
everything in the stomach, unless it is so big it will not come through
the tube. No, sir; I would not have recommended Salgue if, at the
time of making the examination for the Aetna, I had known or been
informed by him that he had a short time previously, say within
a month, gone to Dr. Little for examination for insurance
173 in the Penn Mutual, and had been by Dr. Little turned down
with the statement that he had heart trouble and advised to
go to his own doctor, and had immediately gone to Dr. McAfee
with the statement from Little that he had heart trouble, and Mc-
Afee had then examined him and told Salgue himself that he had
heart disease, and afterwards treated him for it.

By Mr. WIMBERLY:

No, sir; he did not tell me that Dr. Little or Dr. Winchester had
told him he had heart trouble; he said some trouble with his heart.
No, sir; I did not ask him the circumstances under which Dr. Lit-
tle or Dr. Winchester had told him that. Yes, sir; I did consider
that material; he said he immediately consulted the other physi-
cian, and the other physician told him he did not. No; I did not
think it was material why it was Dr. Little gave him that opinion;
I asked him if he had any symptoms at all, and he said he had
none. As to whether I thought the reason why Little gave him
the opinion was material. I never thought much about that. Oh,
yes, sir; the patient himself has feeling of heart trouble; the patient
has many symptoms of heart trouble. As to whether, in this mitral
murmur, the patient would know of it, he would not have known
the valve was leaking; he would have symptoms. Yes, sir; if it
was leaking enough for him to have felt it, I, as a physician should

have found it. As to whether these organic heart troubles are painless in the earlier stages, some of them are, and some are not. Yes, sir; it is a fact that, taking heart trouble generally, the physician frequently can discover heart trouble when the patient does not know anything about its existence. As to whether what the physician examines him for is to determine for himself whether he has it, or not, you have to rely to some extent on what the patient himself says. Yes, sir; when he directs me to another physician, I am in as good a position to make an examination as that physician. I rely on my own examination, and what the patient tells. Yes, sir; I asked him other questions besides what are laid down on the sheet; I asked him if he had any symptoms of heart disease, if he had any pain, any shortness of breath, if he could go up and down stairs, and I asked him a number of questions.

By Mr. WIMBERLY:

As to whether all those questions serve to show whether he had heart trouble or not, they serve to show that he had no subjective symptoms of it. As to whether the absence of those things
174 would tend to show he did not at the time have any serious heart trouble, no trouble with the failure of the heart to work can be serious without his knowing it. Yes, sir; I considered the absence of those things. Yes, sir; the symptoms I asked about were the very kind that would have occurred if he had lifted a heavy box some distance; if he had had that sort of heart trouble, that would have affected the action of the heart; any exertion would accentuate his symptoms.

By the COURT:

Yes, sir; chronic acid gastritis is a common malady. As to how it compares with the commonest of all affections, I don't think it is as common as tuberculosis; I could not state the percentage; I have no figures on that at all; it is quite common, though. Yes, sir; the Encyclopedia Americana is looked upon as authority in some things; I think an article in an encyclopedia would be judged by the man who wrote it, and not by the publication itself. I think it is uncommon in children; it is more common in adults. I think it is more common in the higher classes than in the lower classes, and more common in adults than in small children. I think it is quite uncommon in infants. I think, as a rule, popular articles on technical subjects are very poor in encyclopedias.

F. W. BIDDLE, sworn for the defendants, testified as follows:

Direct examination.

By Judge MILLER:

I am supervisor for the Aetna Insurance Company, at the Home office. I have charge of death claims, annuities, instalments, and also various other duties about which I am consulted by the Vice-President and other officers. My home is in Hartford, Connecticut. I should say there are about seven old line life insurance

companies there, dating back to 1848, at least, some one or two prior to that. I have been in the insurance business twenty-nine years last August. Since I started out, I have examined death claims and annuities, looked after instalments; I have also had a hand in revising applications and policies, and various matters of that kind. Yes, sir; I am familiar with the rules and customs and practice of the great insurance companies, my own included, from my personal experience. As what would have been the result among insurance companies generally, large and small, if the answer to the question, "Has any physician expressed an unfavorable opinion upon your life with reference to life insurance; if so, state
175 the particulars?" had been that Dr. William J. Little, in making an examination as the Medical Examiner of the Penn Mutual Company of this very applicant, John A. Salgue, had, in fact, expressed to him the opinion that he had heart trouble and advised him to go to his own doctor, Dr. J. C. McAfee, who in turn examined him, and examined him upon receiving the message from Dr. Little, and also declared to Salgue that his heart was affected or that he had heart disease, whether it would have enhanced the premium to be charged or would have led to a rejection of the risk, the application would have been rejected under those circumstances. If, instead of the question No. 16, "Has any proposal or application to insure your life been made to any company, association or agent, on which a policy of insurance is now pending? Or has any such proposal or application ever been made for which insurance has not been granted, or on which a policy or certificate was not issued for the full amount, and of the same kind as applied for? If so, state particulars, and the names of all such companies, associations or agents, being answered "None," it had been shown that there was then pending applications by Mr. Salgue in the Prvoident Savings Insurance Company, the Sun Life Insurance Company and the Prudential Life Insurance Company of America, the companies generally would investigate the circumstances of the case, to see if he was endeavoring to obtain what the companies consider over-insurance, and it would depend on the circumstances what action the companies would later take. No, sir; under the customs of the companies, they would not have insured without investigating the pending applications. I might qualify my answer by saying that if it appeared that there was a large amount applied for, the companies would then ascertain the circumstances of the case; look into the financial condition. Yes, sir; it is the custom of insurance companies to interchange information as to applicants; we very frequently ask such questions of one another. Yes, sir; the other companies answer. Yes, sir; that is usual among all insurance companies, frequently happening. If, instead of answering "No" to Question No. 21 asked of Mr. Salgue by Dr. Harrold, "Have you ever had any of the following diseases? Answer yes or no, opposite each; if yes, state the date, duration and severity of illness," he had said that he had been refused insurance by Dr. William J. Little, who told him that he had some heart trouble and advised him to go to his own physician, and he had gone to

his own physician, Dr. McAfee, immediately thereafter, and had been told by him that he had heart disease, under the custom of the various companies and the rules and practice generally as I understand them, they would have declined to accept the application for insurance; we call it decline; reject would be the
176 same thing. The companies would not have issued the policy on such an application—the general custom of companies. I give the same answer as to all companies, without regard to the Aetna. Yes, sir; the application would have been declined.

Cross-examination.

By Mr. WIMBERLY:

I am Supervisor of the Aetna Life Insurance Company at the Home Office. My duties keep me in the home office the larger share of the time; occasionally I go out on cases. My particular duties are to have full charge of all death claims, annuities, instalments; and I am also consulted in regard to revising policies, applications, and various other matters that come up. Yes, sir; I have charge of death claims. No sir; I do not pass on the application originally. No, sir; I have nothing to do with that. No, sir; I am not a physician. No, sir; I have never discharged the duties of Medical Examiner. Yes, sir; the custom of insurance companies in these various matters is governed largely but not wholly by the opinion of their medical director, the Examiner at the home office. He is not wholly the man that reports as to whether he is accepted or rejected. He is not wholly the man that is consulted on matters of health. Yes, sir; we have other physicians at the home office of our company. Yes, sir; we have a Medical Board. Yes, sir; that board is made up of medical experts. I can't say whether they have made that their life study. Yes, sir; they have made it their special work during the time they have been on the Board. Yes, sir; they are the officers charged with the duties of passing upon the health risk and the effects of various disease. No, sir; I am not on that Board, and never have been. No, sir; I have nothing whatever to do with the acceptance of the policy. No, sir; that is not within my line. As to whether when I speak of the custom of companies, I get the custom chiefly from my passing on death claims when I am deciding whether we are going to fight them or not; I am supposed to have a general knowledge of all those things in order to do my work properly. Yes, sir; it is a part of my duties to decide on whether to contest a case or not. No, sir; I am not the man, when a case is contested, that has charge of it as Special Agent to assist the lawyer. Yes, sir; I do work sometimes like I am doing here. Yes, sir; I am the representative of the Company in this defense. Yes, sir; that is the purpose of my presence here. Yes, sir; we have a provision in our policies that they are incontestable after the first year. Yes, sir; of the
177 amount we pay in a year—three million dollars approximately—the largest part of that is on policies that have gone beyond one year. As to whether nine-tenths of it is paid on policies

where the parties have been insured more than a year, I can't st
the proportion. Yes, sir; a very much larger portion. No, s
policies that are in process of adjustment are not really those t
we are considering whether to contest or not. Yes, sir; my expe
ness comes, in a measure, not wholly, in passing on death clai
and assisting the lawyers to fight the death claims. No, sir; I ha
nothing whatever to do with the risk as long as a man is living a
p.ying his insurance all right. No, sir; I do not learn my knov
edge of the customs of insurance companies in the court house
assisting our lawyers to fight these claims and determining to fig
them so I can save my Company money by turning them dow
I learned my knowledge of the customs of insurance compani
from my duties in the office and my duties in passing on dea
claims. As to whether my duties away from the office are defen
ing death claims, I go on cases sometimes to look after the inte
est of the Company as far as I can. Yes, sir; it is in my line
duty to do that. Yes, sir; there is litigation of consequence, a goo
big policy like this, five or six thousand dollars, where I am engage
in some other court, that I do not attend. No, sir; I do not alway
attend unless there is something else to prevent. No, sir; it is n
my rule to attend. No, sir; I do not merely attend when we hav
got a hard case on our hands. Whether I attend or not merel
depends on whether I have been on the case at all before, had an
connection with the case or not; the majority of cases I do not at
tend court. Yes, sir; I have been on this case before. Yes, sir;
am on all cases that are contested where the death claim passes be
fore me. I did not come down here before this present trial pur
posely to investigate this case; while on another case, I investigated
this at that time. If my memory serves me correctly, the othe
case I was investigating was in Georgia, a case we paid. Yes, sir;
it was in Macon. I think it was in 1905 that I came to Georgia.
Mr. Salgue was dead. I can't state how long it was after his death;
I think Mr. Moore will remember. No, sir; that was not the only
time I came to Georgia except this present time to investigate this
present claim. No, sir; it is not the only time I came in connection
with this claim. I don't remember how many times I have been
to Georgia in connection with this claim; I think when I was in
Tennessee on another case, I came through here; I merely stopped
off for a little chat with Judge Miller. No, sir; the matter of the
desirability of a risk is not wholly a matter for the examining board
to pass upon. No, sir; I do not pass on it; I have nothing
178 to do with it, never have had.

Redirect examination.

By Judge MILLER:

I wish to reconstruct my answer to Mr. Wimberly, that I came
down the latter part of the year 1905; I had the year 1905 in mind;
I did not come down on this case before Mr. Salgue's death, and
the year must have been the year of his death, because it was a
few months thereafter that I came down here and stopped on that

case. Yes, sir; I think that was the time I came down also on the case of Lowe.

Recross-examination.

By Mr. WIMBERLY:

Yes, sir; it is true that the Aetna and a number of other companies doing the bulk of the business in this country, some thirty in number, have a sort of what might be called an exchange of information bureau, or association to furnish each other with information. I don't know that it is about all matters that may affect a risk, and all such information; they have got a bureau which is supposed to report. No, sir; they do not answer any question and give any information asked, in that bureau. Yes; the other companies answer any question asked, as a matter of courtesy; they are under no obligation to do so.

By Mr. BLACK:

That bureau is only a bureau concerning rejections; that is all.

Defendants closed.

179 The plaintiff then offered the following evidence in rebuttal:

Dr. R. B. BARRON, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

My profession is that of a physician. I have been a practising physician twenty-six years. I live and practice medicine in Macon. Yes, sir; I examine applicants for insurance companies. Yes, sir; I examined Mr. John A. Salgue in his life time, for insurance, for the Sun Life of Montreal, and the Provident Savings of New York. Yes, sir; I remember the time I made the examination; I examined Mr. Salgue for the Sun Life on June 29th, 1905, and for the Provident Savings on July 1st, 1905. Yes, sir; I examined his heart, to see whether there was any heart affection or trouble. I stripped Mr. Salgue to his flesh, and made a thorough examination, as I always do for life insurance companies, and found nothing detrimental to his receiving insurance, and recommended him. Yes, sir; I made that examination on both occasions. I did not find any disease of the heart on those two occasions. Yes, sir; I think, if there had been any organic disease of the heart, I think I would have discovered it in the investigation I made. Yes, sir; I think, if there had been any abnormal enlargement of the heart, a displacement of the apex of the heart, I would have discovered it on those two examinations. Yes, sir; I am sure I would have discovered it, if there had been any mitral murmer of the heart. No, sir; I did not discover either of those symptoms. The apex of the heart is usually slightly to the left of the nipple; it is not always. In Mr. Salgue's case, it was in what we consider the

normal position. No, sir; everybody's heart is not locate
exactly alike; a man of Mr. Salgue's size and physical develo
as he appeared to me, might lead me to look for the apex
heart in a different position from what I would yours. N
everybody's heart is not the same size; it varies very much a
ing to the physical effort and physical labor of the man. I d
find Mr. Salgue's heart abnormal, considering his developmen
ability to work. By my statement that I would not look fo
Salgue's heart in the same place that I would look for Mr.
berly's, I meant that I would expect to find a larger
180 in Mr. Salgue than in Mr. Wimberly. Possibly I d
know Mr. Wimberly. I did not refer to the hesp
feature of it, but to the anatomical condition of it. As to wh
a man will have a larger heart, just as a larger man will
larger muscles on his legs and arms, what I meant to conve
my answer was that a man that engages in physical labor w
naturally have a larger heart and a more thoroughly devel
heart, as to the anatomical condition, than a man that had s
tary habits. Yes, sir; the heart is consequently larger. Yes,
it is my impression that a man who uses his muscles largely n
have a larger heart. As to Mr. Salgue's general health and phy
appearance, when Mr. Salgue came into my office on the 29t
June, I remember especially distinctly that day in 1905, I tho
he was the finest specimen of physical manhood, or one as fin
I ever saw; he had clay on his shoes, and he had his sleeves r
above the elbow, and he was well developed physically and e
other way, so far as I could see, and I thought him an excel
specimen of manhood. No, sir; there wasn't anything to evide
the existence of any disease. Gastritis, technically, is recognize
the inflamed condition of the muc-us membrane of the stom
Yes; I think it is a curable disease. As to what I would say a
a case of gastritis that had as its type too much digestion, and h
I would treat gastritis of that kind, I do not usually find that ki
I do not usually find a stomach that digests too much, that has
much digestive power; it is the want of digestive power I fi
There may be such a disease as gastritis that consists of too mu
digestion, but I have not found it. If a patient came to me t
had no pain, no emaciation, had his strength and ability to w
and his only complaint was of his digestive powers being too stro
I don't think I would prescribe for him; I think I would adv
him to go home and get his mind clear. No, sir; I would n
wash his stomach out. As to what trouble we wash a man's stoma
out for, there are some physicians and capable men that follow t
line of washing out the stomach; it is not the usual practice of t
profession. I heard the question propounded by the oppositio
I have very kindly and professional feeling for Dr. McAfee, an
the other man Dr. Johnson, I think, mentioned by the other gentl
man, in Atlanta, that washed out stomachs. I have seen it on
in my life, and I do not care to see it any more. No, sir; it is n
the commonly accepted medical treatment. I saw no evidenc
physical, subjective or otherwise, of Mr. Salgue being a suffer

from gastritis, at the time I examined him. As to what
181 would have been the proper symptom to have existed at the time, if he had gastritis, we usually have emaciation following gastritis. No, sir; there was not any emaciation there. No, sir; there was not any temperature, according to the best of my recollection; whatever the report shows is my answer. Yes, sir; I mean temperature above the normal. I don't see the question of temperature on these two reports. Yes, sir; if there had been any increased temperature, the chances are I would have reported that fact, but if the question was not asked, I may not have made it. Some policies ask the question of temperature, and others do not. I do not see that in this policy. Yes, sir; I presume that is correct, as asked there, that I examined him with a stethoscope. As to how thorough the examination was that I made, to see if he had a sound and normal heart, it was the same kind that I would make of every man; I stripped him to his waist, removed his clothing, and used my stethoscope, and ascertained if there *are* any functional or organic trouble with the heart. No, sir; I found nothing in that examination that would point in any way even slightly to the existence of any heart trouble. As I said before, I examined the man, and recommended him for insurance; yes, sir; in two companies. Yes, sir; my impression is he was accepted by both companies. As to whether organic heart disease is a thing the patient would be conscious of in the earlier stages, or whether it is a matter that is determined by a physician, it is very rarely the beginning of heart trouble can be recognized by the patient. Yes, sir; it is a matter that is determined by the physician's examination.

Cross-examination.

By Mr. BLACK:

As to whether I asked Question 15: "Has any company ever declined to insure your life, or offered you a policy on a different plan, or at a higher premium than that for which you applied," and what his answer was; the answer is "No"; I presume that, without any question, I asked that question, and that is the answer. I have no question that I asked Question 16: "Has any physician ever given you an unfavorable opinion upon your life, with reference to life insurance? If so, state, particulars," and his answer is "No." I have no question that I asked Question 17: "Has any application been made by you to any company, and afterwards withdrawn? Give details." and his answer is "No."

Yes, sir; I asked him Question 5: "Have you now, or have
182 you ever had any of the following diseases: answer yes or no to each? Have you ever had disease of the heart?" and "No" is the answer that he gave me. As to whether I asked him Question 11: "When and by what physician were you last attended, and for what complaint," and he answered to that question: "Dr. Stapler"; I presume that is correct; I think it is. As to whether I asked him this question 15: "Has any life insurance organization postponed or rejected your application for insurance,

or restoration of an elapsed policy?" and he replied "No," as written there, I think that is correct. When I spoke of the opposition having asked Dr. McAfee a question, I meant you, Mr. Black, by the opposition. By opposition, I meant the opposing counsel. As to who I mean you were opposing, I presume you represent the defense. Yes; most assuredly, I mean by that opposing the plaintiff. I did not mean any animosity, I will assure you; I was not made that way. Yes, sir; I know Dr. Osler, and have heard him lecture on medical subjects. Yes, sir; I consider him an authority; I think he is one of the most excellent I ever knew of. Yes, sir; if the heart did not furnish sufficient blood for the system, that might result in gastritis. Yes, sir; there may be a relation between gastritis and incomplete heart action; there might be. If you will excuse me, there may be a relation between any organ of the body and the heart, when the heart fails to properly perform its function. As to whether insufficient circulation through the portal is recognized in authorities as being one of the reasons for the condition of gastritis in the stomach, I don't think it would be as much through the portal as it would through the arterial. As to whether I agree with Dr. Osler: "Conditions of the portal circulation, causing chronic engorgement of the mucous membrane, as in chronic heart disease, and certain chronic lung affection," I did not say the portal might not produce it; I said I thought the arterial would be more liable to produce it than the portal circulation. As to how many forms of gastritis there are, that depends on the doctor you meet up with. In medicine, we usually recognize acute, chronic and sub-acute symptoms. I never heard of such a form of gastritis as acid gastritis, until I came in this court. As to whether washing out the stomach is recognized in medical authorities as one of the best methods of treating gastritis, I think there are certain people that recognize it; as a member of the profession at large, I don't think so. As to whether I would if Dr. Osler said it was one of the best ways, anything Dr. Osler would say I would agree to, under ordinary conditions; at the same time, I might not practice it. Lavage
183 is washing out of the stomach. As to whether I agree with Dr. Osler, if his opinion is: "Of measures which stimulate the glandular activity in chronic dyspepsia, lavage is by far the most important, particularly in the forms characterized by the secretion of a large quantity of mucous. Luke warm water should be used, or, if there is much mucous, a 1 per cent salt solution or a 3 to 5 per cent solution of bicarbonate of soda. If there is much fermentation, the 3 per cent solution of boracic acid may be used, or a dilute solution of carbolic acid. It is best employed in the morning on an empty stomach, or in the evening, some hours after the last meal. It is perhaps preferable in the morning, except in those cases in which there is much nocturnal distress and flatulency. Once a day is, as a rule, sufficient, or, in the case of delicate persons, every second day. The irrigation may be continued until the water which comes away is quite clear. It is not necessary to remove all the fluid after the irrigation"; as I said

before, I think any opinion offered by Dr. Osler cannot be improved upon; furthermore, I want to state here and now that it is not the general practice in my town, or in the State of Georgia. Yes, sir; I remember who Dr. Crawford Long was. He is represented to have discovered anæsthesia. It was about five years after it was discovered before it was used generally. This has been going on in Dr. Osler's book; I have one volume issued in 1891; it was published then. I presume it is still published; the last edition I think has it, but — altogether as strong as the former. I think 1891 is stronger. Yes, sir; I examined the heart of Mr. Salgue. I discovered no mitral murmur at all, unless my report says so; and if I did, I would not have recommended him for insurance. As to whether I could be mistaken as to whether there was a mitral murmur, or not we all may be mistaken. A mitral murmur is a failure of the blood to properly pass through the valves of the heart, the valves between the passage from the auricle into the ventrical. The mitral valves are the valves affected; that designates itself. The effect of the incompetency of the mitral, the effect on the heart, is to produce the range circulation. Yes, sir; it has an effect on the ventricles of the heart. I don't know that I can answer the question, which ventricle of the heart becomes affected first, the right or the left, where there is a mitral murmur. If Mr. Salgue's heart was a little out of place, and I put my ear to his body over the nipple, I think the chances are I would have heard the mitral murmur. Yes, sir; I could be mistaken. Yes;
184 I think it is also true that a mitral murmur may be more apparent at one time than another. No; the noise a mitral murmur makes does not necessarily depend on the position of the patient; a mitral murmur, or any murmur of the heart may be more distinct at one time than at another. As to whether it may be more distinct in an recumbent position than standing, I think it is the other way. Yes, sir; the distinctness of the mitral murmur depends on the position of the body, and other things. Yes, sir; where you have a heart murmur, you expect sooner or later a hypertrophied condition of the heart, enlargement, in other words. Yes, sir; that is the natural consequence. Ordinarily, there are no subjective symptoms of a mitral murmur, until the murmur has reached that place or point where the heart fails to properly circulate the blood and produces an enlargement, not only of the structures of the heart, but also extend the muscular structure of the heart and increases the cavity of the heart; when that arises, then you have something upon which you can base an opinion. The natural progress of a heart affection which starts with a mitral murmur is ultimately to the destruction of the person that has it. When the heart is destroyed, the person is, naturally, sometimes, not always. Yes, sir; it is my opinion that the natural progressiveness of the disease that starts with a mitral murmur is the destruction of the person. Yes, sir; the listening to the heart is called *ost*ulation. Yes, sir; that may be distinct at one time, and indefinite at another; I have heard heart murmurs

at one time, and at another, in a man I was satisfied had murmurs of the heart, I could not hear them.

Dr. G. P. GOSTIN, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

My profession is that of physician. I have practiced medicine thirty-one years. I reside and practice medicine here in Macon. Yes, sir; I knew Mr. John A. Salgue in his life time. When he first consulted me professionally was on the 18th of April, 1906, I was sent for; he was out at Mr. Morgan's drug store; the first time I ever met him was at that time. He wanted me to come out and examine him and prescribe for him, which I did. That was the first time I ever saw the gentleman. Yes, sir; I examined him at that time. I took him in the back room of the drug
185 store, and stripped him to the waist, and made a pretty thorough examination. I found, as the result of that examination, that he had an engorgement of the liver, suffering from a malarial attack, seemed to be a malarial condition of the liver. I examined his heart and everything as thoroughly as I could, and prescribed for him, and asked him to come to my office when the medicine gave out, which lasted six days. Yes, sir; he did that. After I prescribed for him, and he came to my office, I think it was on the 24th of April, I took him in the office, and stripped his clothes to his waist, and I made another thorough examination, and to all appearances, he was all right; he told me he was all right; I made a thorough examination, and found he was, so far as I could find. No, sir; he did not, at the time of either of those examinations, have any heart disease, that I could find. Yes, sir; I examined him carefully. I examined him thoroughly, and I did not find any murmur of the heart. No, sir; I did not find any mitral murmur at that time. No, sir; I did not find any enlargement. No, sir; I did not find any displacement of the apex of the heart; it was all normal, so far as I could find. As to whether, in my judgment, from my examination at that time, he had any heart disease in April, 1906, if he had any, I could not find any; I made a thorough examination with my ear; and then I examined him with the phenendescope; I used the phenendescope. Yes, sir; that magnifies sound. With that instrument I could detect nothing of a mitral murmur, or anything indicating heart disease. The next time I saw him, I met him on the street, and he asked me about his bill, and I told him I did not know exactly what it was. He said: "If you have got time, I will go with you up to your office; I can pay it now." He went with me up to my office, to find out what his bill was, and I did not examine him at that time; that was about the 30th of April; and I asked him how he was getting on, and I believe his answer was, he was as good a man as there was in Macon. His appearance was just as fine as could be. I did not see any difficulty in breathing, or shortness of breath, or anything pointing to heart trouble; he went up the

stairs with me, and I did not see any. I did not discover anything abnormal with his heart, at all. During these different times, the liver disease was all the disease I found; when I examined him the first time, I found his liver was tender on pressure; he complained of heaviness in that side, which I found to be a malarial trouble.

By the COURT:

I don't know where he worked; he told me he was working
186 at the Bibb Brick Company. No, sir; I do not know where that is; I never was there in my life; it is down in the swamp, I know. Yes, sir; I know it is in the swamp. Yes, sir; that swamp is — a very salubrious spot; it is a place I don't want to stay; I never was in there myself.

By Mr. WIMBERLY:

As to whether the swamp there is liable to cause this malarial trouble I found, my experience is that all swampy stagnant water is of that nature. I attributed his trouble to the place where he worked and lived, was all. As to when I next saw him or prescribed for him after April 30th, I was sitting in my office one day during my office hours, and he came up the steps and came into my office, and says to me: "Doctor, I have hurt myself, and I want you to give me something to ease my pain; I am suffering a great deal of pain." That was on the 8th of May. He said he was either putting some machinery on a car or getting it off a car, and in some manner, I don't recollect which he said, he listed it, and hurt himself, and he was in a good deal of pain. I examined him, and gave him something for it; he was complaining right considerably; he said it felt like a hot place in his chest, that it seemed like it was on fire, it was burning so. I examined him pretty thoroughly, stripped his clothes to his waist again, put him on the table, and examined him pretty thoroughly, took my phenendescope, and tried him again. I could not find anything that day; that would seem to be abnormal, so I told him to come back the next day. He said: "Well, I want you to give me something to ease me." I gave him some little medicines to ease the pain, and he came back the next day to see me. I made the same examination again, went through it in the same way, and I could discover, as I thought at that time, just the least murmur, a little pulse-like murmur. Still, I told him I would not give him anything for it, I wanted him to come back the next day, which he did. On the third day when he came back, I examined him and made up my diagnosis thoroughly, I was satisfied about it, and I gave him his treatment, and advised him to go home and let me place an ice bag on his chest. My diagnosis at that time was a false anuerism of the fourth or fifth valve of the aorta. I thought maybe, by putting that on there, I could cause a contraction, and cause a decrease of the aneurism. He would not do it. When I found he would not, I told him to come back the next day; it was getting interesting; I have seen a good many aneurisms, and I never saw one working that way,

and I told him to come back the next day. It was still get-
187 ting louder and bigger, and he was suffering with pain, and I still advised him not to go back to work; that was on the fourth day. On the fifth day he came back, and it was getting louder and louder. I increased the medicine, and still I insisted on him being quiet, to go home and go to bed. He said he could not do it. I said: "Mr. Moore will attend to your business." He said: "Mr. Moore don't know about my business like I do." I had him to come back the sixth day. I was watching him, and doing what I could. I told him on the sixth day: "It is merely a matter of time; you have got to do it; you will have to quit work." I was begging him to quit work. On the seventh day, he came back, and the same thing over again. On the eighth day, I told him he would either have to quit work, or he would die at his work, and he had better go home and go to bed. He said: "Doctor, I have been advised to go to Indian Springs." I said: "Anywhere to get out of your business, to get away from your business, and be quiet." I advised him to go to Indian Springs and go to bed. He went up there, and was gone about a week or ten days, or probably two weeks, I don't know the exact time. He wrote me he was feeling first rate lying in bed, and he thought he would be all right when he got up. I wrote him not to come home, I thought it was dangerous. Before I heard from him, he started home, and died suddenly on the train. From the symptoms I have given as to the course the disease took, I think that lifting that machinery was the first cause of his death. As to how that caused his death, in lifting that machinery, the blood vessels are made up of three coats, three distinct coats; in lifting the machinery; he tore the internal and middle coats of this blood vessel, that was where his pain came from and the blood was forced through or stretched this external coat and the surrounding wall, forming the aneurism, and the aneurism got larger and larger every day as it went on, until it got so it pressed on the lungs and produced shortness of breath, and he could not breathe well without getting on his left side. Well, that went on, and that caking up caused a rupture of the blood vessel, and he was gone. I think the trouble that killed him would be called aneurism; I think Osler put it down as aneurism. I have got his last works, and have been reading them. As to what organs the aneurism affected, it was in the arch of the aorta. Yes, sir; I know that caused his death. The aorta is the large blood vessel that conveys the blood from the heart. Yes, sir; it is one of the blood vessels that make up the arterial system. The part of the arterial
188 system that is known as the aorta is the large blood vessel that passes from the heart to distribute the blood out through the system, from which other branches come; it is a large blood vessel that comes up and ascends and descends. Yes, sir; the place where it turns is what we call the arch. As to whether he had any heart disease or heart trouble before the lifting of the heavy weight causing the aneurism, if he had any, I did not find it; I examined him pretty thoroughly; I have a little instrument, the phenendescope; I examined the blood vessels with it, and I could not find any. No, sir; I do not think heart disease caused his death or contributed to it at all. No, sir; I don't think any stomach trouble, gastritis,

contributed in any way to his death; he did not give any sign of gastritis at the time.

Cross-examination.

By Mr. BLACK:

I think the first cause of his death was his lifting that machinery and rupturing the coat of that aorta. The technical name of it is aneurism of the arch of the aorta. No; it was not thoracic aneurism. It is hard to tell what the difference is between aneurism such as I think he had, and thoracic aneurism. When you have got a thoracic aneurism, it is a small one, and in the first place, I don't believe you could find it. No, sir; I don't think he had thoracic aneurism. Yes, sir; this is the death proof to the Aetna Life Insurance Company. This was made out June 5th, 1906. Yes, sir; I signed that. Yes, sir; that is my handwriting. Yes, sir; I think I swore to it. Yes, sir; I stated in that death proof, thoracic aneurism; I meant by that he had an aneurism of the aorta; you see, it is ascending and descending; there are two or three portions of it. This proof of death furnished to the Prudential, is the same, died of aneurism of the aorta; there are different sections of the aorta; it arches from the heart, arches up first and then goes down there, descending and ascending. I swore here that he died of aneurism; that is what I swore to; that is what he died with. Yes, sir; in answering Question 10: "State the remote cause of the death?" I stated here thoracic. Either one would have noted the one there. That vessel there arched from the heart up and descended and wound down so, whether it was from the top or the bottom. Yes, sir; when I went to see him on April 18th I discovered that he had an enlarged liver. No sir; that is
189 not the direct result of having a diseased heart. As to whether disease of the heart affects the liver, it may in some cases, and in some it don't; I don't think it does. I know numbers of them that have heart trouble, that haven't got any liver trouble. Yes, sir; I suppose sometimes an enlarged liver follows an affection of the heart, is the result of a heart affection. Yes, sir; this enlarged liver I found might have been the result of heart trouble, but I don't think so. If there was any heart trouble there, I did not discover it. Yes, sir; the enlarged liver might possibly be the result of heart trouble. As to whether I found anything abnormal before May 8th, I found he was suffering with malaria on the 18th of April. No, sir; I did not find anything the matter with the heart then. I made my diagnosis on the third day; I did not find anything the matter with his heart then. No, sir; I never did find anything the matter with his heart. No sir; we do not have an affection of the circulatory system in heart disease; the circulatory system has nothing to do with the heart. I suppose the aorta is an inch and a half or two inches from the heart. No, sir; it does not come out of the heart; it comes from the vessels surrounding the heart. Yes, sir; the aorta is fastened to the heart. As to whether I would consider it a part of the heart, right around the heart is apt to be, but not as far as the arch. No, sir; the heart is not necessarily affected if the aorta is affected. Yes, sir; the distinction I am making is my idea

of the aneurism. As to whether it was about an inch and a half, I can't say for certain whether it was in the arch or in one of the ascending or descending vessels; it was there in the neighborhood. As to whether I could tell whether it was right on the heart, or an inch and a half away, it was not right on the heart, I know, an inch or more or further than that.

By Judge MILLER:

As to whether I have a fixed opinion that this man died of thoracic aneurism, it was in the neighborhood there; I suppose it was either in the branch or the arch; it was right in that neighborhood. You see, the descending starts from the arch, and the ascending starts from the arch. Thoracic aneurism means aneurism of the thoracic aorta. What is known as a true aneurism is an enlargement of all of the arterial coats of the aorta uniting to form a pouch. That is in one place of the blood vessel. They are apt to appear in any part of the body; they are as apt to appear in one place as another; they occur in various places of the body. Yes, sir; we get them in the leg or the arm, or anywhere. As to the result that takes place when aneurism causes death, it is a rupture, but not every time; you can get an aneurism that will cause death from suffocation, pressure on the blood vessels. Yes, sir; they will sometimes form a clot and go to the brain, and produce softening of the brain and a good many things. Yes, sir; there is such a thing as aneurism of the heart itself; you can get an aneurism; it is called varicose aneurism, where there is a connection between the blood vessels and the valves. I believe that is the way Osler puts it. You can have aneurism of the heart between valves of the heart, or you can have it between the aorta and the pulmonary artery. What we call varicose aneurism is that between the valves and the blood vessels. Yes, sir; there is such a thing as aneurism of the vessels of the heart. By vessel I mean small blood vessels. You see Osler put it down there. I don't know when I read that, probably a week or two ago, no, not right recently. It would be a pretty hard question to tell the difference between an aneurism of the aorta and an aneurism of the heart proper, except of the heart proper, I don't believe you can get into it well; you have to go by signs; and the only [one] you can get at that, would be by the regurgitation of the blood. Yes, sir; you listen to the heart and you mighty quick find they are there, too. As to whether I can tell the difference between aneurism of the heart and heart disease, I don't know that I have ever seen a case of aneurism of the heart; I would have to study that thing before I could tell you anything about it; I have never seen a varicose aneurism; I have seen what is true, and what is known as false aneurism; I have never seen a case of varicose aneurism. As to whether a man can have a valvular aneurism next to the heart, they say you can have that; that is known as a varicose aneurism. As to what would be the difference in the murmur given off between a valvular disease of the heart and an aneurism of the heart, they both give some sort of regurgitation sound; I couldn't tell you the difference between the sound to save my life. I am positive this man did not have anything the matter with his heart; I know because he had a normal heart

sound; a man with a normal heart sound don't have any heart trouble. No; I did not find any abnormal sound in my previous examination of this man's heart. As to whether an aneurism of the heart produces similar murmurs to heart disease, it would have a regurgitant murmur, but not have any heart disease. A man
191 with heart disease can have similar sounds from his heart as when he had an aneurism of the heart; yes, those sounds I stated they are so much alike, it would be hard to distinguish them; I don't think I could distinguish them. No, sir; I did not hear Dr. McHatton's testimony. Yes, sir; he stands all right in the medical profession. I do not consider Dr. McHatton any more the dean of the medical force in Macon than some others; I think they are just as much of a dean as he is. Yes, sir; he is recognized as high as anybody in Macon. No, sir; after listening to the reading of Dr. McHatton's testimony about the man having heart disease, or this regurgitant murmur of the heart indicating his condition, I would not change my opinion as to his not having heart disease when I examined him in March and April, 1906. I have made it a rule of my life never to take any man's word for anything, and I examined him myself. Dr. McHatton may be right, so far as I know. When I got hold of him, I did not find anything at all. Yes, sir; the date of my first visit was in April, 1906. Yes, sir; I treated him up into May. As to whether the time that Dr. McHatton was treating him, March 1st, 20th and 30th, and April 13th and 15th, 1906, was during the period of my treatment, I was called to see him on the 18th of April, 1906. As to whether he came in three days from McHatton to me, I went to see him, and found him suffering with that enlarged condition of the liver, and I diagnosed it as of malarial origin. No, sir; I did not go to see him sooner than that. I made only that one visit, and I found him suffering with a painful liver and a very heavy dragging feeling in the side, and on pressure the liver was tender, and I then made a thorough examination, as thorough as I could, of the heart and all the circulation, and I found no enlargement of the heart, but I did find the liver swollen, and on the treatment it gave way readily, as nice as anything I ever saw. I gave him calomel; I think I gave him twenty-four grains in six doses, and put him on protiodide of mercury three times a day after I gave him a course of calomel. Yes, sir; I gave him a very vigorous calomel treatment, because his liver needed it. I gave him that calomel every three hours, I think, until he was thoroughly purged, and after that I put him on one-half grain of protiodide of mercury, and I gave him enough to last six days until he took it up, and then to come to my office. I gave him twenty-four grains of calomel, divided into six doses. As to whether, if McHatton was treating him
192 on the 13th and 15th of April, for heart disease, when I went to see him on the 18th, three days later; I examined the liver more than anything else, until I examined his circulation; his pulse was just as regular as could be, and I found no sign of any mitral trouble. Yes, sir; I examined his heart and examined his whole body. As to my being called in for a man who was apparently suffering from malaria, and my impression being con-

firmed by what he told me as to his symptoms, I examined him, and I just judged from my physical examination of the man and all; I questioned him; I never saw the man before in my life, and I was obliged to take his word for it. No; he did not say anything that directed my attention to his heart. No; I did not examine his kidneys. As to whether there was any special attention to the heart in that examination, a man naturally, if you are going to make any examination at all, will examine his heart and pulse and temperature; he had no fever, and his temperature was normal, 98 1/2. No; sir; he did not tell me that only three days before that he had been under treatment of Dr. Mulhatton for his heart. No, sir; he did not tell me anything about any previous troubles or interviews of some time before, that Dr. Little had given an adverse opinion about his heart. No, sir; he did not tell me anything about McAfee's treatment. No, sir; he did not mention any previous sickness and treatment by doctors, naming them; his very words were these: he told me he was suffering with his liver, and his bowels were a little constipated; I had another patient that lived right there by him, and this patient had advised him to come to me and let me give him a course of treatment; I had relieved him so quick, he thought I could relieve him, and on examination, I did not ask him any questions about it; I know he told me where he was working, and I knew from where he worked, where he said it was, it was obliged to be sickly in the swamp. No, sir; he did not mention Dr. Ross treating him for malaria. I don't know whether you can go to one of the windows here and see the brick plant right down there or not; I never looked for it in my life. I don't know where it is. As to its being right at the foot of Poplar Street, and your being able to get there in five or six minutes, if you will give me my car, I can get there quicker than that; I never was down there; I can't tell you where it is. As to its being just a little to the right of Jacques & Tinsley's warehouse, I don't know where it is; I never was there in my life; I couldn't tell you to save my life where it is.

193 By the COURT:

The arterial system is the arteries that convey the blood from the heart to the body. Yes, sir; this aorta is the great canal that supplies the arteries of the heart. Yes, sir; the thorax is the chest which holds the heart rigid. The aorta passes from the right side of the heart. As to whether it springs from the left ventricle of the heart, I have not glanced at that authority in some time. Yes, sir; I know there was an aneurism somewhere there in the aorta. Yes, sir; that is my testimony. Yes, sir; an aneurism is a disease of the walls of the arteries, resulting in the formation of a pulsating sac or swelling. There are three or four forms of aneurism. Yes, sir; when the disease process leads to the rupture of the walls of the blood vessels with an extraviviscation of blood into the adjacent tissues, making a tumor-like formation, such an aneurismal swelling is known as a false aneurism. As to whether, in the true aneurism, the sac is formed by one or more of the coats of the arteries, a true aneurism is put down in most of the works as being a dilation of the walls of

the artery and uniting to form a pouch, and it makes a sort of pouch like. Yes, sir; the true anuerism varies in size and shape. Yes, sir; it is true that sometimes they are fusiform, cylindrical, cirsoid, in which a branch of the artery is included in the swelling, circumscribed or sacculated. Yes, sir; there may be an arterio-venus aneurism; that is what they call a varicose aneurism. Yes, sir; the causes of aneurism are manifold; the most important feature is a chronic disease of the connective tissue of the blood vessels arterio-sclerosis that results in the weakening of the walls and gradual distention of the vessel with the formation of a sac. Yes, sir; the symptoms are often extremely obscure and depend in large part on the presence of a tumor that makes pressure symptoms on important organs; that is my scientific experience with them. As to the progress of the disease, the effect on the patient and how he dies, some of them may go on for years, and then die from a dropsical affection; some of them die suddenly. I don't think there is any rule or standard how he should die. Ass to what length of time some of them may live, sor e may live a long time; I have had several of those that have lived a long time. Yes sir; some may die suddenly. The natural course of the malady resulting from a true aneurism, that aneurism may go on and enlarge and enlarge, and get against the chest walls and obscure the ribs or the bony portion. I saw a case a few years ago, a Mr. Horton, that went
194 on and obscured three ribs. That went on to where he could not work, and he had to be sent to his home and be taken care of. It obscured several of his ribs. That was a true aneurism. Yes, sir; an aneurism sometimes comes from violent exercise on the part of a healthy man. As to whether it usually comes from a disease of the connective tissue, it can come from that. I don't recollect about the authority on that; I couldn't tell you whether it usually comes that way or not. My opinion as to the effect of the continued presence of that heart disease evidenced by a mitral murmur upon the general health of the sufferer, from my experience with it, I have had several cases, they, as a rule, get nervous and some of them lose flesh, and there are various ways it affects them, some get as nervous as can be, and it affects them in that way, and I have seen a few cases of those mitral murmurs that they never knew it at all. As to whether they would know it by its effect on their system, their health, they seem to be getting on pretty well. As to whether they show any special anaemic result, some do and some do not.

Redirect examination.

By Mr. WIMBERLY:

No, sir; this aneurism I have testified about was not an aneurism of the heart. Yes, sir; if a congested liver resulted from the heart, there would be signs of the heart affection, as well as the congested liver. No, sir; I did not find signs of heart affection there. If the engorged liver had been caused by chronic heart trouble, the heart would not have yielded to the treatment I put him upon; it might sort of mitigate the heart trouble; I don't think the liver

could be relieved enirely if it was caused by that. Yes, sir; of course, when the trouble gave way perfectly under the treatment I prescribed that tended to confirm my diagnosis of the liver trouble.

195 JOHN T. MOORE, plaintiff, sworn in his own behalf, testified as follows:

Direct examination.

By Mr. WIMBERLY:

Yes, sir; I am the plaintiff in these cases, as the administrator of John A. Salgue, deceased. No, sir; I have no interest in it, other than my official duty as administrator. Yes, sir; I knew Mr. John A. Salgue in his life time. He was employed as superintendent of the Bibb Brick Company. I was secretary and treasurer of the company at that time. As to the circumstances of Mr. Salgue's application for insurance and what connection, if any, I had with it, my recollection is a little indistinct as to the Prudential. My recollection, however, is, about the first of June, Mr. Adams, representing the Prudential Insurance Company, came to my office to collect an insurance premium from myself, and the question of insurance came up, and Mr. Salgue came into the office about that time, and he had been talking about taking out some insurance, and I just suggested to Mr Adams he might write him a policy. Yes, sir; I had some insurance myself in Mr. Adams's Company. As I understood Mr. Adams' testimony, it was that I sent for him to see Mr. Salgue to secure a policy; I have stated my recollection; he was in my office and I merely suggested to him that he might be able to write Mr. Salgue. At that time, Mr. Salgue was earning about five thousand dollars a year; his fixed salary was three hundred dollars per month, and then he had an interest in the profits also, which amounted to about five thousand dollars. At the time he spoke of thinking of taking out some insurance, his health was good, so far as I know; he was a strong, robust man; I did not know he ever had a complaint. He had been working for my company about four years, up to that time. As to whether he had had any sickness of any consequence during that four years, my recollection is, in the spring, either January or February, 1905, he had a slight bilious attack, and that he lost two days from his work. Up to the time he applied for insurance, the total amount of time that he lost from his work by reason of sickness or poor health was two days; yes, sir; in the whole four years he worked from twelve to sixteen hours a day. His work was in the brick mill and in the clay hole; he was general superintendent, and he looked after all of it. The clay hole is in the swamp near the city; the mill itself is located in the city
196 limits, just in the edge of the swamp. We hauled our clay about a mile at that time. Yes, sir; the work was largely in the swamp and in this clay hole. Yes, sir; I think the work he did was such as required vigor and strength and a healthy man to do. He was a very energetic man, and if he found a piece of work that was necessary to be done, he did not mind staying all night to do it, to have the mill in shape to run the next morning. As to

what led up to the bilious attack he had, the two days sickness, and what time of year that was, I can only give you my opinion about it; it was having worked in the clay hole in the winter; my recollection is it was in January or February. As to the character of the work that he had to work on all night, our steam shovel was submerged; we had had a freshet in the river; he went down to build a coffer dam to make the hole smaller, so as to have less pumping to do, and he remained there over night at the clay hole working to get the steam shovel out; he wore a pair of rubber boots up to his waist, and he was there in the water all night. Yes, sir; he was working in the water. As to whether I was present at the time Mr. Adams wrote the application in the Prudential on Mr. Salgue's life, that is not clear to my mind; I am not sure about it; I was present when Mr. Adams was trying to persuade him to take the policy. As to what Mr. Salgue told Mr. Adams at that time, my recollection is that he told Mr. Adams that he would like to increase his insurance, that he had been talking to me on the subject of insurance, and that he had about four thousand dollars, and he would like to make his line ten thousand dollars. Yes, sir; he had been talking to me about insurance. As to what he said about other applications, to other companies, he said he had made applications in several companies, the different life insurance agents had been very persistent in writing him a policy, and that his mind had become clouded on the subject, he did not know what he wanted. He said, now, if you gentlemen want to write me, you can get your policies and bring them here and I will stretch them out on the desk and read them over and I will accept those that suit me. Yes, sir; that was when Mr. Adams was trying to persuade him to let him write this application. Yes, sir; Mr. Charles Adams, the gentleman who testified here. Yes, sir; I was present at the time Mr. Hawkins and Mr. Ray came out there to write the Aetna policy. As to what occurred at that time, I think on July 6th, 1905, I was going to Forsyth, I was called there to visit my sick mother, and I met Mr. Ray on the train, Mr. Bolivar H. Ray. We walked into
197 the smoking car, and Mr. Hawkins was introduced to me by Mr. Ray, and during our conversation, they being interested in insurance the insurance question came up, and they undertook to write me, or try to persuade me to take a policy with them, and I told them I had all I could carry. I think I suggested to those gentlemen probably they could write our superintendent, if they would go down to see him, that I thought he was considering taking out some insurance, and I stated the amount he wanted was six thousand dollars. Well, I returned to Macon on Friday night, and on Saturday morning when I reached my office, Mr. Ray and Mr. Hawkins were there. I think that was the 8th of July, to the best of my recollection, and my recollection is they were standing out in the yard, talking to Mr. Salgue. When I drove up to the office, they all came into the office and were still discussing life insurance, and these gentlem were very persistent in trying to get him to take a policy in their company, and he said to them that he had applied for other insurance, and he only wanted six thousand dollars. He said, however,

"If you will agree to do it, you can write your policy out, or have your policy written and send it here, and I will spread it out on the desk and if it suits me I will take it," he could tell more by reading it than by talking to them, and he said he would accept it if it suited him and if it did not he would not. Yes; he said other people had written applications for him; I don't know that he stated who. As to what occurred then, he said, further: "I don't think I can get life insurance, any how; Dr. Little has stated I had heart trouble," or words to that effect. He said he thought Dr. Little was mistaken, that he was as strong as he ever was in his life. Mr. Hawkins said: "That is a question for our physician; he can settle that mighty quick." Mr. Ray went to the phone and telephoned Dr. Barron; it happened he was not in his office, and then he called Dr. Harrold; Dr. Harrold was there in about fifteen minutes. Yes, sir; I was present when Dr. Harrold came. When he came in these gentlemen stated they wanted him to examine Mr. Salgue for life insurance, and Mr. Salgue stated to Dr. Harrold what Dr. Little had said to him, and my recollection is Dr. Harrold's remark was: "Just shuck off, old man, and I will find out whether there is any trouble with your heart or not." I understood him to mean by that to take off his coat and vest. Yes, sir; I was there when Dr. Harrold got through examining him, he took him in the adjoining room; I think the answers
198 to his questions were written in my office; that is my recollection; he did take him into the adjoining room for the physical examination. No, sir; I did not go into the adjoining room while the physical examination was taking place. Yes, sir; I was there when he came out in the adjoining room after the physical examination. Dr. Harrold's statement then, as well as I remember was: "I will stake my reputation as an examining physician, there is no trouble with your heart; if you have heart trouble, I also have." As to what occurred with reference to Mr. Salgue signing any papers or giving any notes, my recollection is that Mr. Ray was writing out this application, and some of these questions came up and the doctor decided about this heart trouble, and Mr. Ray said: "I will answer it 'no,' because the doctor said no." And after the application was written, one of them went over to my desk and wrote out a paper, and they stood at the book-keeper's desk and wrote a paper, I did not know what it was. I was not interested in the matter, and he asked him the question, if he wanted the policy to go into force at once, and he said what he did before, he did not know, "if it suits me I will take it; if it don't, I won't." But the papers were signed, it seems, and the first I knew he had signed a note, about the 20th. I received the policy and the note from Mr. Hawkins, with a letter to please send him a check to the amount of the insurance. As to whether I looked for the original letter I got from Mr. Hawkins, I don't think I kept it at all; the matter was settled in a few days after that, and I did not preserve the letter; it was not appertaining to our business. As to the contents of the letter as well as I remember it, he just wrote me to please send him my check, is my recollection, for the amount of Mr. Salgue's note, and enclosed the policy. My recollection is the letter and policy were addressed to "John T.

Holmes," and in the same mail I had a letter from Mr. Hawkins, saying the letter was there, and it was intended for me. Yes, sir; that was the letter I got. As to what was done then, I was surprised in finding the note there, after the conversation in my presence. I went to the office and saw him, and asked him if he had signed this note for the life insurance premium. He said "no," he had not. I showed it to him and he said: "Why, I thought I signed a receipt here for something for these people; I did not sign any note. He was very angry, and my recollection is he refused to pay it. No, sir; my recollection is not entirely clear as to whether I
199 got another letter from Mr. Hawkins, or not. My impression is, Rr. Ray came to the office again to try to persuade Mr. Salgue to take this policy. I am not entirely clear on that point. As to what was finally done, I had quite a talk with him about it, and he refused absolutely to pay it, said he would not have it. I told him: "You perhaps did not know you signed a note, but you have; here is the note; these people can sue you and make you pay it, in my opinion, and rather than have a law suit, I believe I would pay it." He finally agreed to, and I mailed the Company's check to Mr. Hawkins for the amount. I want to state that it is not my check; that check is a check of the Bibb Brick Company's. I was an officer of the Company, and this amount was charged to Mr. Salgue's account, on the books of the Company, where he had his salary account. As to what occurred with reference to the delivery by Mr. Adams of the policy in the Prudential Insurance Company; my recollection is Mr. Adams came out with the policies, and he had two policies, what is called a participating and a non-participating policy; the premium on one was a good deal more than on the other, and when he brought them down, Mr. Salgue told him he believed he did not care for them, he would not accept either of them, and I think it went along a week or ten days before, perhaps, he finally agreed to take them, and I stated to him I thought Mr. Adams was representing a good company, and I believed if I was him, I would take the policy, and I know it was through my persuasian he finally agreed to take it. As to what Mr. Adams did, in order to get him to take it, as to the premium, I think he divided the commission with him; that is my recollection. The amount was paid Mr. Adams by a check of the Bibb Brick Company. I do not know anything about the ci-cumstances about the delivery of the policies of the Sun Life. I know that Mr. Anderson Clark came out there, and was trying to deliver him a policy. As to whether Mr. Salgue took both of those policies at once, or whether there was any considerable delay about them, my recollection is that those policies were written about the 28th of June; I am not clear on that; in fact, all of those applications were within a week or ten days of each other, is my recollection. The man was besieged by life insurance agents out there, and it got to be very annoying to him to have those people out there and stopping him from his work, not only at the office, but at his home at night. As to whether he refused to take either of the policies in the Sun Life until some months later, my recollection is they had two policies of three thousand dollars each,

and that he took one on presentation, and the other was held
200 over until November, and I think Mr. Holland, who was representing the Sun Life at that time, took this to him, and told him that was the last day he had, or something like that, and he wanted him to take it. Yes, sir; Mr. Holland is here in Court; that is the gentleman over there. That was either October or November after he had taken about the first of July, before he took them. As to whether he took all, or refused to take some, he refused more than he took; my recollection is they wrote him for about forty thousand dollars. The ones that he finally took were the Sun Life, the Prudential and the Aetna. I think it was six in the Sun Life, six in the Aetna and five in the Prudential. Now, the Provident Savings, I had better say about that Company; it seemed the agent of the Provident Savings at that time was a Mr. Ross, who was killed on a train near Milledgeville, he fell off the train, or something, and was killed. He tried to deliver these policies to him, and he did not take either of them. I think he tried quite a number of times. My recollection is those policies were three thousand dollar policies; they were written and sent out, and he did not accept either of them. They were sent out by Mr. Ross. During the time these policies were being applied for, those that were taken out and rejected, Mr. Salgue's health was good, so far as I know. As to what his appearance was, as a healthy man in June or July, 1905, and the balance of the year 1905, I considered him as strong and robust as any man I knew; he was a very stout man, physically. As to whether he was able to do steady and continuous work, I think he did more work than any man connected with the brick yard. As to his appetite in June and July and after that time, during the year 1905, he had a very ravenous appetite, I know I have remarked to him quite often, as his dinner was sent to the office—he did not go home to dinner—and I frequently told him he ate enough for dinner to last him a week. No, sir; there were no signs of indigestion during that time, that I know of. No, sir; he never made any complaint of indigestion or stomach trouble while he was eating those big meals or any other time. No, sir; he never complained of any shortness of breath, or pain in the side. No, sir; he never complained of any pain in his stomach, until up within two or three weeks of his death. Yes, sir; 1906 was the year of his death; the 27th of May. As to what occurred during the year 1906, in Mr. Salgue's work out there, preceding this trouble with his health, I remember about the first of
May, we were just completing a dry kiln, and we had some
201 fitting for it shipped in, and among them was a barrel of buts and bolts in the shipments, and this barrel was about a fifty gallon barrel, as I remember, a syrup barrel, or oil barrel, or something of that kind, and these fittings were shipped in it, and in unloading that they threw it down, and the head busted out, and Mr. Massee and I came through the yard about that time, and Mr. Salgue, Mr. Massee and myself were walking there, and he passed this barrel, and he said to a couple of negroes: "Head that barrel up; those nuts are being wasted." They took hold of it, and did not seem to be doing anything with it. He was a very impetuous man,

and he said: "Get out of the way, and let me do it." And he headed it up himself. Those fittings were made of iron. It was lying down on its side, and he lifted it up and set it on one end. That was along, as well as I remember, near the first of May, 1905. As to the result of his picking it up, after that, Mr. Massee remonstrated with him about it; he said: "We don't want you to do that sort of work; we have negroes here for that purpose, and we want you to take a rest." He said: "I am thinking about going to the Springs." Mr. Massee said: "All right, go ahead, and the Bibb Brick Company will pay your expenses." Yes, sir; after he headed that up, he complained of pain; in about a half hour after that, he came to the office, and sat on the steps, and complained of a pain in his chest. He never was well after that. No, sir; he had never complained to me of any pain in his chest, up to the time he listed that barrel. As to the character of work he did, in the day time or night time, during the early part of 1906, or February, 1906, we had the same experience we had in 1905; the steam shovel being submerged in the clay hole. Mr. Salgue spent the night in there again; he went into this work about noon one day, and he came out at seven o'clock the next morning, and he told me he had not had a mouthful to eat, he had worked all night and day, and just got it out. I think that was about the first of March, 1906. No, sir; he did not have any trouble after that, to cause him to consult a physician, to my knowledge; he may have consulted them; the only complaint I know was after his having lifted this barrel of fixtures; then he continued his work up to a few days before he died. As to the time that intervened between the time he lifted that barrel and his death, this was in early May, and he died the 27th of May. My recollection is, about ten days before he died, he decided he would go to the Springs, Indian Springs; my recollection is, it was Wednesday afternoon, he came to the office, and said: "Mr. Moore, my work is
202 finished; we have been at work on this brick yard five or six years; it is at last completed, and I want to go now and take my rest." I replied to him what Mr. Massee had suggested some days before, that the Company would pay his bill, to go to the Springs and rest. He went on Wednesday, is my recollection, and returned to Macon Sunday night or Monday morning. He was at work, and remained there until Thursday of that week, and returned to the Springs, and on Sunday night about eight o'clock I was telephoned from the Southern depot down here, that Mr. Salgue was on the train dead. I was acquainted with Mr. Salgue about five years. Yes, sir; I was acquainted with his character. As to his general character as to honesty and integrity, I think he was one of the most honorable men I ever had any dealings with.

Cross-examination.

By Mr. BLACK:

As to whether it was about June 1st or July 1st that Mr. Adams came out there in reference to the Prudential application, the reason I said June 1st, my premium is due about June 1st. Yes, sir; there is thirty days' grace on any premium; sometimes we take it, and

sometimes we do not take it. As I stated, I think it was about June 1st; that is my recollection; I think Mr. Adams made several trips to the office out there, to write him. To the best of my recollection, it was about June 1st. As to my stating that at the time Mr. Adams was there, Mr. Salgue stated that he would take all of those policies when they came out, and lay them on the desk and read them, and select the ones he wanted, that was one of the things I wasn't clear about; there were so many of those insurance agents out there. That was his final decision, he would spread them out and read them over and accept those that suited him. No; I can't say positively whether he stated that to Mr. Adams, or not; to the best of my recollection, he did. As to whether that recollection is based on the fact that he stated that to the other agents, and I presumed from that that he stated it to Mr. Adams, I have answered that the best I can. To the best of my recollection, he stated that to Mr. Adams. As to having answered it both ways, I don't know whether he stated it to Mr. Adams; to the best of my recollection, he did. This was four years ago. As to my recollection being vague as to the Prudential, and my not remembering whether he said that to Mr. Adams,
203 and whether I am saying he said that to Mr. Adams because I heard him say it to those other gentlemen, the best of my knowledge and belief is, he said it to Mr. Adams. Yes, sir; I said just now that my recollection was vague, and now I state my recollection is not vague. No, sir; nothing has happened in the last minute to refresh my recollection.

By Judge MILLER:

Yes, sir; I stated there were a great many people out there trying to write insurance on Mr. Salgue's life, and he refused more than he accepted. Yes, sir; I still think that. No, sir; I am not able to recall all the numbers and names of the various companies, because I do not know the companies those different people represented. I happened to know about the Provident Savings, on account of the death of Mr. Ross at that time. As to whether the Penn Mutual application was sent out, about June 30th, I don't know; I know Mr. Anderson Clark was out there trying to write Mr. Salgue insurance, and that time I think he represented the Penn Mutual Life Insurance Company. Yes, sir; I think he came back afterwards for the Sun. Yes, sir; I think he came first for the Penn Mutual, and afterwards came back for the Sun. I think a man by the name of Nowell came first for the Sun Life, and finally Mr. Anderson Clark came with him; I don't know who they were working for. Yes, sir; according to my recollection, the Sun Life issued two policies of three thousand dollars each, and one Salgue took about that time, somewhere in June or July, and the other, to the best of my recollection, he took in October or November. Yes, sir; in that case he accepted about six thousand dollars; you understand, he accepted three thousand dollars of this insurance, my recollection is, about ninety days after the policy had been written; he took three thousand dollars of the insurance of that Company somewhere in June or July, immediately after the appli-

cation, and my recollection is he accepted the last one, he said Mr. Clark had been very clever to him, and he felt like he ought to accept his policies. Yes, sir; that was just before it ran out, in October or November. Yes, sir; together, he accepted six thousand dollars in the Sun Life. No, sir; he did not accept a policy for six thousand dollars from the Prudential—five thousand dollars. Yes, sir; he accepted a policy of six thousand dollars from the Aetna, because he had to. That is the fact. As to whether he had, at that time, two thousand dollars that had been written some years before in the Prudential, and two thousand dollars in the Mutual
204 Life, my recollection is that he had two thousand dollars in one company and a thousand dollars in the other; I don't remember which. I know he made the statement that he had four thousand dollars of insurance, but after he died, I didn't find but three. Yes, sir; I had the idea at first, when I spoke to Ray and Hawkins, that he wanted to raise his insurance up to ten thousand, increase it from four to ten, yes, sir, and for that reason, he needed six more, whether he got it in one policy, or more. No, sir; the Provident Savings policy did not come too late; he did not accept it. Yes, sir; he refused that. As to whether he had a chance to refuse the Penn Mutual, I don't think any application was ever filed for insurance in the Penn Mutual, at least, not to my knowledge, I don't know anything about that; I did not know anything as to the Penn Mutual; I only know the statement Mr. Salgue made to me when he returned from Dr. Little's office. Yes, sir; my impression is that his application for insurance in the Volunteer State Life was rejected or turned down by Dr. McHatton. It is my impression that I did not know that until about thirty days after this other insurance had been applied for; I saw the notice sent out from the office in Chattanooga, that he had been refused insurance in the Volunteer State Life. Yes, sir; I think it is true that Dr. McHatton, the medical examiner, put him through the medical examination, and made an unfavorable report, and Mr. Salgue did not get the policy. Yes, sir; it is true that he got seventeen thousand, Aetna six, Sun Life six, making twelve, Prudential five, making seventeen thousand dollars. As to his not having been rejected himself by the Penn Mutual, and his not having himself rejected the Volunteer State, and out of all the companies, he only rejected the Provident Savings. I said that out of the policies written, there was no policy written by the Penn or the Volunteer State; he did not have any opportunity of rejecting them. Yes, sir; out of all those, he rejected only the Provident Savings, and accepted the rest. Yes, sir; those are all the policies I know about. The agent of the Provident Savings then was Mr. Ross. No; I don't think he was dead when they came. No; I did not say that before the policies came out Ross was killed between here and Milledgeville; while they were pending, and they were trying to persuade him to take it, Mr. Ross was killed. I don't know, but it seems to me like a man named Wilson took it up; I am not clear on that; my understanding was that they sent out four different policies for six thou-

sand dollars each, and therefore he turned down more than
205 he accepted. Yes; I think I saw all of those policies; he had quite a stock of them. As to the exact language of what I heard Salgue tell Dr. Harrold about what Dr. Little had said, and whether I spoke to Dr. Harrold, or Mr. Salgue spoke to him; Mr. Salgue spoke to him; it was in my presence, when Dr. Harrold walked into the office, Mr. Hawkins and Mr. Ray stated they wanted him to examine Mr. Salgue for life insurance; Mr. Salgue then made this statement, that Dr. Little had said to him, that you have got some heart trouble, "I think Dr. Little is mistaken; I am as strong as I ever was in my life." Yes, sir; that was what Salgue said. Dr. Harrold said: "Just shuck off here, old man, and I will find out whether there is anything the matter with your heart." He took him into the next room, and gave him a physical examination, as I understand. As to what I heard Salgue state to either Ray or Hawkins, as to what Little had said to Salgue; Mr. Salgue was sitting in the window, and I was seated at my desk, it was a matter I was not concerned in, I heard the conversation; they were trying to write a policy; they were very persistent in it; there was absolutely no chance for a man to get away from them; he told them Dr. Little had advised him that there was some trouble in his heart, and he said: "I am as good a man as I ever was; there is absolutely nothing the matter with me." One or the other, I think Mr. Hawkins, said: "That is a matter for our examining physician; he can determine that matter." Yes, sir; that is as near as I can recall the words.

By the COURT:

Yes, sir; I testified that I was acquainted with Mr. Salgue's general character, and that it was good. Yes, sir; his general character for integrity was good. Yes, sir; I know that to be true.

E. H. HOLLAND, sworn for the plaintiff, testified as follows:

Direct examination.

By Dr. WIMBERLY:

Yes, sir; I was agent for an insurance company during the time Mr. Salgue was making application for insurance, in 1905—the Sun Life of Canada. Yes, sir; I was subpœnaed by the defendant
in this case. Yes, sir; I delivered one of those policies. It
206 was in the latter part of September that I delivered that one, about the 28th or 30th, I think. No one sent me out there to make that delivery; I was the representative of the Company at this place. I had the policy that I delivered to Mr. Salgue about three months before he consented to take it. I only went out there one time, trying to persuade him to take it, before he finally consented to take it. No, sir; I don't know how often Mr. Clark was out there.

No cross-examination.

JORDAN MASSEE, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

Yes, sir; I knew Mr. Salgue in his lifetime. I had known him about four or five years. I was vice-president of the Bibb Brick Company, and owned about a half interest in it. Yes, sir; he was superintendent. Yes, sir; I was acquainted with the man's general character, from my connection with the company and my knowledge of him. His character for honesty and integrity was absolutely good; he was sought after by every brick company in the South, trying to take him away from us, all the time. Yes, sir; I remember the time he took out some insurance about July, 1905; I think that whole thing started from the fact that Mr. Moore and I were in the office in his presence, discussing a joint policy to be taken out by Mr. Moore and myself, and Mr. Salgue said he wanted some. I informed all the insurance agents, a friend of mine, to take it up with him, among the number Mr. Collier, and he called, and I tried to persuade him to take Mr. Collier's policy, if he had to turn somebody else down. Yes, sir; the insurance agents were there. Yes, sir; they were very persistent. As to his health at that time, he was the strongest and most robust chap I ever knew in my life. He had not lost any time during the four years he had been at the brick company up to that time, two days maybe. During 1905, his digestion and appetite were all good, so far as I know; I never took but one meal with him, and that was up at Mr. Moore's in Monroe County; he had a pretty strong appetite. No, sir; I never heard him complain once of any stomach trouble, or
207 give any indication of dyspepsia or stomach trouble or indigestion of any kind. No, sir; he never did, 1905 or before 1905, complain of any heart trouble, or shortness of breath, or feeling tired; on the contrary, he worked from twelve to twenty hours a day. He was General Superintendent, but his principal duties were straightening out our troubles, the difficulties in the clay hole; the freshet cut through our clay hole and submerged the steam shovel, and he was in the clay hole a good deal of his time. Yes, sir; that was down in the swamp, about a mile from the works. Yes, sir; I remember times in 1905 and '6 when we had such freshets. As to what time they occurred during those two years, in January, my recollection is we had five, we had one the last day of December, and in January and February, 1906; I looked it up. During 1905, at the time he lost two days from his business, it was clay hole work that preceded that. As to what he did in the clay holes in 1906, we had continued trouble down there with freshets, and he worked down there sometimes every night all night. Yes, sir; I remember his lifting a weight; that was just before he died; we were finishing the steam dryer, it was the last one; we were finishing the steam dryer; we had been delayed waiting for some fittings, and a keg of fittings came, and I saw him head up the keg of fittings two or three convicts had failed to do. The reason it impressed itself so strongly on my mind was, I was just back

from Dr. McHatton's office from an interview with him, and seeing this man make a strain after what Dr. McHatton had said, I was impressed by it. I went to Dr. McHatton on my own business, and in the conference he made some statement about Mr. Salgue, and when I went to the office, he and Mr. Moore were coming up, and he was in front of this dry kiln, and I saw Salgue head up this keg of spikes; it must have weighed seven hundred to a thousand pounds. As soon as he finished that, I took him up to the office, and said what McHatton said to me. If I had not known Dr. McHatton so well, I would not have told him. I told him what Dr. McHatton said, he must absolutely cut out that kind of work, we were willing to pay his salary and let him walk around the yard, and I finally wound up by saying you will finish this kiln in a day or two, and he could go up to Indian Springs for a rest; I suggested that the company would pay his expenses and send him to Indian Springs for a rest. Yes, sir; I heard him complain after making that lift, but he would not admit there was anything the matter with his heart. No, sir; he never did complain of any trouble until after that lift.

208 Cross-examination.

By Judge MILLER:

As to whether Mr. Salgue, on a previous occasion, took a trip to Richmond, I think he took one or two trips while he was with us, on a short vacation, no illness connected with it, so far as I know, that caused it.

By the COURT:

Yes, sir; I should think the work he was engaged in would be very unhealthy, down in the swamp there; that is the general impression. The clay pit is back of the brick plant, about a mile over in the swamp. The clay pit is about half a mile from the river, or maybe three-quarters. As to the distance from the Central Railroad tracks, it is not in that direction; it is nearer the Southern Railway track; the plant is about three or four hundred yards from the Southern Railway track, and the clay hole is about half a mile back of that in the swamp; there is considerable stagnant water there, and Tracy's Lake is over there. Yes, sir; Tracy's Lake is stagnant water. Yes, sir; part of the clay pits fill with water, those that have been abandoned, and those left by Blake and Charlie Harris have a considerable water. Yes, sir; there are mosquitoes in that part of the world. Yes, sir; the seepage or drainage or garbage from the city extends down in that direction; the canal runs between our office and our clay hole, the city canal that drains this part of the swamp. Some sewerage accumulated in it; the main sewerage canal empties into the river in another place. Yes, sir; I was intimate with Mr. Salgue; I was there every day. No, sir; I never heard him make any complaint about chronic acid gastritis; I was thunderstruck when Dr. McHatton made the statement to me that the man was ill. It was about three weeks before he died,

he told me about his heart. No, sir; I never heard him make any complaint about any heart trouble, or shortness of breath whatever. Two days' time is all I can remember that he lost in the four years. As to what he had to do, he could fill any man's place on the works; I have seen the locomotive engineer fail to show up, and he would jump on the locomotive and run that; and I have seen the fireman fail to show up, and he would do that. Yes, sir; I have seen him shovel clay, and fire a kiln. By firing a kiln, I mean burn brick; that was his long suit; he was an expert brick burner. By long suit, I mean he was better fitted for that than anything else. I have seen him fill all of the positions on the place.

209 J. J. COBB, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

Yes, sir; I knew John A. Salgue in his life time; I had known him, I suppose, between three and four years; I can't say positively. Yes, sir; I knew his general character. His general character for honesty and integrity was exceptionally good, I thought. Yes, sir; I knew the general character he bore; I saw him quite frequently when he was here.

J. N. NEEL, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

Yes, sir; I knew John A. Salgue in his life time. I suppose I had known him three or four years, or longer. Yes, sir; I knew his general character in the community for honesty and integrity. That character was very good.

GEORGE WATSON, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

Yes, sir; I knew John A. Salgue during his life time; I had known him for two or three years, I think, before his death. Yes, sir; I knew his general character for honesty and integrity. That character was first class.

W. J. YARBAROUGH, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

I live now at 2804 Second Street, on the New Houston Road. I am Master Mechanic for the McCaw Manufacturing Company, or

the Proctor & Gamble Company, it is now. Yes, sir; I
210 knew Mr. John A. Salgue in his life. He was a neighbor of mine; I expect we were more intimate than any other neighbors; our work was kind of in the same line. I had the same position at that time, with the McCaw Manufacturing Company. Yes, sir; I knew his general character for honesty and integrity; he was a perfect gentleman; that character was good.

E. L. REEVES, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

I live at 1928 Second Street. I am foreman of the plant of the Central Manufacturing Company, at present. Yes, sir; I knew Mr. John A. Salgue in his life time; he was my neighbor about twenty-two months before he died, lived right across the street from me; I was very intimate with him for that length of time. Yes, sir; I knew his general character for honesty and integrity; that character was good. Yes, sir; he was a healthy man, had very little sickness.

MRS. JOHN A. SALGUE, sworn for the plaintiff, testified as follows:

Direct examination.

By Mr. WIMBERLY:

Yes, sir; I am the widow of the late John A. Salgue. I reside in Richmond, Va. I was married to Mr. Salgue in 1900, November the 21st. I was married to him in Richmond, Va. From the time I married him to the time of his death, we lived in Suffolk, Va., in Macon, Ga., and in Rome, Ga. At the time of his death, he was living in Macon, Ga. He had been living in Macon between four and five years. His health was good up to a short time before his death. In 1905, his health was good. No, sir; he was not sick at all during the year 1905. The year before he died, he lost about two days from his business, from a bilious attack. That was along about February or March. Dr. Ross was out there at our house once or twice. No, sir; Dr. McAfee was never out there, to my recollection. No, sir; he never complained of being tired, or short b-eathing, or pain in his chest, at all, during 1905. He had a per-
211 fect appetite. Yes, sir; his food agreed with him. His sleeping was good. No, sir; there was no sign of sickness or trouble with his health at all during 1905, except the two days I spoke of. Prior to 1905, during my entire married life with him, it was always good. Yes, sir; he was a healthy man. Prior to 1905, he was a well man. He died on May 27th, 1906. He complained of trouble between two and three weeks before he died. Yes, sir; I remember how the trouble started; it started from lifting something heavy at the brick yard. No, sir; I never heard him complain of any pain in his body prior to that time. It was in May that he first complained of pain from lifting something heavy at the brick

yard. No, sir; before that lifting at the brick yard, he did not make any complaint of any pain in his body, or of his heart troubling him, or of his breathing, or of any trouble with his heart, at all. Yes, sir; I know what sort of work he did there in the early part of 1906; they had a freshet down there, and he had to work sometimes night and day. No, sir; he did not come home at night, at all. That occurred the last of February or the first of March, 1906. His health was all right after he got through the freshet. No, sir; he did not have any heart trouble following that. No, sir; he did not have any stomach trouble at all during 1906. No, sir; he had none in 1905. Yes, sir; I know something about the writing of insurance on his life. As to what I know about it, I know I was worried many times with agents, when Mr. Salgue returned home at night, they would be sitting on the porch waiting for him, and he sometimes would have to wait an hour before he could eat his supper, so they were very worrying to me. That state of things kept up two or three weeks, or more; I remember some of their names, but not all. Yes, sir; I and my two children live in Richmond.

No cross examination.

212 JOHN T. MOORE, plaintiff, recalled, testified as follows:

Direct examination.

By Mr. WIMBERLY:

Yes, sir; this is the check with which the amount was paid to Mr. Adams for the first premium. Yes, sir; $150.00 was what Mr. Adams charged Mr. Salgue for the first year's premium; that amount was charged to Mr. Salgue on the books of the Bibb Brick Company. Yes, sir; that is the amount the Company charged for the first year's premium, the amount they accepted.

Cross-examination.

By Judge MILLER:

Yes, sir; Mr. Salgue bore the relation to me of employee of the Bibb Brick Company, and Mr. Massee and I were his employers. No, sir; it was not the company that looked after the payment of it, and simply charged his account on our books; Mr. Salgue asked me to give Mr. Adams the money, and I gave him the Bibb Brick Company's check. Yes, sir; the account he kept with the Company was charged with that amount, as an advance by the Company.

ATLANTA, GA., 8-2-'05.

Mr. John A. Salgue, c/o Bibb Brick Mfg. Co., Macon, Ga.

DEAR SIR: I beg to thank you for your remittance of $169.44 which I have just received from Mr. J. T. Moore. I still want to say that you have taken the very best contract that you could get for the money in my opinion and in order that you may not misunderstand the contract we have written you, I wish to make the following statements: First—We are writing you $6000 insurance

for $169.44 a year, which is $5.76 a year less than the Prudential would have charged you for $5000 Participating insurance. Now, in five years that means a difference of $28.80; at the end of the fifth year the Prudential cash surrender value is $365.00, while our cash surrender value amounts to $312.00, but as you have paid the Prudential $28.80 more for the protection for five years, for
213 only $5000, and have had $1000 additional protection with us over and above the amount you have had with the Prudential—which to say the least is worth $75.00 our cash value would run to a total to you of $415.00 against their value of $365.00.

At the end of the tenth year, I find that our cash value is $900.00 against their value of $885. At the end of the fifteenth year, our cash value is $1536, and the Prudential $1450. At the end of the twentieth year our cash value is $2202, while the Prudential is $2035.

Now, should you surrender your policy at the end of the twentieth year you have guaranteed you about $167 more cash value than the Prudential, having saved about $5.76 in premiums a year, which amounts to $115.20 and having had given you $1000 additional protection for 20 years which, at the Low Te-m rate of $15, amounts to $3000. Therefore, our policy at that time is practically to you worth $582 more than the Prudential.

At the end of the twenty-fifth year I find that our cash value is $2864 against the Prudential cash value of $2565, a difference of $300, so that the only time the Prudential's policy is more valuable in case of surrender is during the first few years of the contract, and those values are not actual when you consider that you are paying us $5.76 a year less money and have $1000 more protection.

I have gone thus into detail with you, in order that you may appreciate that every statement we made to you was in the utmost good faith and that you may be entirely satisfied with your contract, and become one of our persistent policy holders.

With kind personal regards, I am,

Yours very truly,

W. E. HAWKINS, *Manager.*

MACON, GA., *July 8th*, 1905.

Mr. J. H. Huntington, Jr., Mgr. Ordinary Policy Dep't, Newark, N. J.

DEAR SIR: I mailed you on the 6th, inst., application of J. A. Salgue for $5,000 Whole Life Participating insurance. Since that time a competitor has gotten hold of him and convinced him that he should have Non-participating instead of Participating, and I beg to ask that you send out an extra policy, Whole Life Non-participating, for him, together with an application ready for signature, and in case I cannot deliver the Participating Policy,
214 I will have him sign the application for the Non-participating and return the other, but I shall do my best to deliver the Participating policy. Please be as prompt in issuing this application as possible, otherwise I am afraid I will lose the business. Mr. Sal-

gue is a good subject and already has $1,000 with us, 5% Guaranteed Twenty Year Endowment Bond.

Very truly,

C. M. ADAMS,
General Agent.

The following check to C. M. Adams, agent of the Prudential Insurance Company of America, was then introduced by the plaintiff:

No. 103.

MACON, GA., *July 29th*, 1905.

American National Bank of Macon, Ga.,

Pay to the order of C. M. Adams $150.00 One hundred and fifty dollars.

BIBB BRICK CO.,
Per J. T. MOORE,
Sec. & Treas.

Paid July 31, 1905, American Nat'l Bank, Macon, Ga.

Endorsed on back: C. M. Adams.

215 The foregoing constitutes the proceedings, the testimony and statement of all the evidence introduced upon the said trial. And both sides having closed, and before the Court charged the jury, the defendant, the Aetna Life Insurance Company of Hartford, Conn., through its counsel, moved the Court to direct the jury to return a verdict for the defendant in the following language:

"And now comes the Aetna Life Insurance Company, of Hartford, Conn., by its counsel of record, and moves the Court not to submit said case to the jury, but to direct a verdict in its favor, upon the ground that the evidence introduced upon the trial of said case, with all the inferences that the jury can justifiably draw from it, is insufficient to support a verdict for the plaintiff, and demands that a verdict should be directed in its favor.

A. L. MILLER,
CHAS. H. HALL, JR.,
Attorneys for Defendant The Aetna Life Insurance Company of Hartford, Conn."

The said motion for direction of the verdict was overruled by the Court, and said instructions refused.

To which ruling of the Court the defendant The Aetna Life Insurance Company of Hartford, Conn., then and there duly excepted. Which exception was duly noted and allowed by the Court, such exception so presented and allowed being that such instruc-

tions should have been given upon the grounds presented theref
and the defendant, The Aetna Life Insurance Company, here
tenders this, its bill of exceptions to the Court to sign and seal, a
the Court does hereby sign and seal the same.

Defendant says that the refusal of the Court to give this instru
tion was error, because:

First. The instruction was legal and applicable to this issue
presented by the defendant; and,

Second. Because the instruction requested was not covered b
the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Cou
to the jury, and to the argument of counsel, counsel for defendan
the Aetna Life Insurance Company of Hartford, Conn
216 submitted in writing to the Court and requested the Cou
to give to the jury the following instructions:

1. "I charge you that in this State,

"Where an applicant for life insurance covenants in his ap
plication that the statements made to the medical examiner ar
true, and these statements are made a part of the contract of in
surance, and form the basis of such contract, any variation in any
of them, which is material, whereby the nature or extent or char
acter of the risk is changed, will avoid the policy, whether the state
ment was made in good faith or wilfully or fraudulently."

Which instructions the Court refused to give, and thereupon,
while the jury was still at the bar of the Court, the defendant,
the Aetna Life Insurance Company of Hartford, Conn., by its
counsel, excepted to the refusal of the Court to give said instruc-
tions, which exception was duly noted and allowed by the Court,
the grounds of said exception so presented and allowed being that
the language of the request was a correct statement of the law
applicable to the case.

Defendant says that the refusal of the Court to give this instruc-
tion was error, because:

First. The instruction was legal and applicable to this issue as
presented by the defendant; and,

Second. Because the instruction requested was not covered by
the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court
to the jury, and to the argument of counsel, counsel for defendant,
the Aetna Life Insurance Company of Hartford, Conn., submitted
in writing to the Court and requested the Court to give to the
jury the following instructions:

"I charge you further that,

"Wherever an applicant for life insurance makes material rep-
resentations in his application or examination, and covenants that
they are true, and these representations are made the basis of the
contract of insurance, such contract is void if the representations
vary from the truth in such manner as to change the nature,
217 extent or character of the risk. This is true although the
applicant may have made the representations in good faith,
not knowing that they were untrue."

Which instructions the Court refused to give, and thereupon, while the jury was still at the bar of the Court, the defendant the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

First. The instruction was legal and applicable to this issue, as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for defendant, the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"The application of Salgue, the insured, to the Aetna Life Insurance Company contained the following statement, made on July 8th, 1905, his policy being issued July 15th, 1905:

"'Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am now in good health, of sound body and mind, and that the following statements signed by me are full, correct and true; and that I have no knowledge or information of any disease, infirmity or circumstance, not stated in this application, which may render insurance on my life more hazardous than if such disease, infirmity or circumstance had never existed; and I do hereby agree that the declarations and warranties herein made, and the answers to the following questions, together with those signed by me on the second page of this application, shall be the basis and form part of the contract (or policy) between me and said company, and that if the same be in any respect untrue, said policy shall be void.'

218 "Now, I charge you that if Salgue, by a written answer in his said application to a question as to whether he had heart disease, answered 'No,' such answer being warranted and covenanted to be true in his application, he is bound by his covenant without regard to his good faith in making the representations, and if such statement made as to his not having heart disease was untrue, then the policy issued to him by the Aetna Life Insurance Company would be void."

Which instructions the Court refused to give, and thereupon, while the jury was still at the bar of the Court, the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

First. Because the instruction was legal and applicable to the issue as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for defendant the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"The insured, Salgue, in answer to a question asking for the names and residences of all of the physicians whom he had personally employed or consulted during the five years next preceding July 8th, 1905, answered, 'Dr. Jas. T. Ross, Macon, Ga.' Now, if you believe from the evidence that the insured had, as a matter of fact, either personally employed or consulted Dr. W. J. Little, Dr. J. C. McAfee and Dr. W. R. Winchester, in addition to Dr. Ross and within a few days prior to July 8th, 1905, I charge you that this would be a material misrepresentation, because such answer withheld from the Aetna Insurance Company very important sources of information, which it was entitled to have in response to said question."

219 Which instructions the Court refused to give, and thereupon, while the jury was still at the bar of the Court, the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

First. The instruction was legal and applicable to this issue as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for defendant, the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"The insured was also asked this question by the Aetna Company's agent:

"'Has any proposal or application to insure your life been made to any company, association or agent, on which a policy of insurance is now pending? Or has any such proposal or application ever been made for which insurance has not been granted, or on which a policy or certificate of insurance was not issued for the full amount, and of the same kind as applied for? If so, state

particulars, and the names of all such companies, associations or agents?'

"To this question he answered, 'None.'

"Now, I charge you that if you believe from the evidence there were pending at that time applications for insurance in other companies, associations or agents, or that an application had been previously made by the insured to the Penn Mutual Company, upon which insurance had not been granted, then this reply upon the part of the insured would be a material misrepresentation of fact, whether such answer was made in good faith or not, and under the terms of the application signed by the insured, such answer would render said policy void."

220 Which instructions the Court refused to give, and thereupon, while the jury was still at the bar of the Court, the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

First. The instruction was legal and applicable to this issue as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for defendant, the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"The insured, Salgue, was asked the following question:

"'Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? If so, state particulars.'

"To this question he answered, 'No.'

"Now, if you believe from the evidence that within a few weeks prior to July 8th, 1905, the date of his application to the Aetna Company, Salgue, the insured, was examined by Dr. Wm. J. Little, as the Medical Examiner for the Penn Mutual Insurance Company, who told Salgue in substance that his heart was in such condition that he could not recommend him for life insurance, advising him to see his own doctor about his heart, and that on the same day Dr. J. C. McAfee, to whom Salgue had been referred by Dr. Little, examined Salgue and expressed a like unfavorable opinion as to the condition of Salgue's heart, and made such opinion known as to Salgue, then I charge you that, under the terms of the said application and Salgue's warranty therein, said policy would be void, and Salgue's administrator would not be entitled to recover
221 against the Aetna Life Insurance Company, because if such are the facts, Salgue's answer would be untrue, and be a material misrepresentation, and void the policy."

Which instructions the Court refused to give, and thereupon while the jury was still at the bar of the Court, the defendant, the Aetna Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

First. The instruction was legal and applicable to this issue as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for defendant, the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"I charge you also that the instructions I have just given you as to the effect upon the insurance policy issued to Salgue by the Aetna Company or the misrepresentations as to his death are to control you, notwithstanding the evidence may show that Salgue came to his death from a thoracic aneurism as claimed by the defendant."

Which instructions the Court refused to give, and thereupon while the jury was still at the bar of the Court, the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

222

First. The instruction was legal and applicable to this issue, as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for defendant, the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"I charge you that the application of John A. Salgue to the Aetna Life Insurance Company contained the following statement: 'I further agree that no statement or declaration made to any agent, examiner, or any other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of said company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance

Company are signed by one or more of its executive officers, and that no other person can grant insurance or make any agreement binding upon said company.' This agreement is incorporated in and made a part of the policy of the Aetna Life Insurance Company sued upon. In addition to this agreement between the assured and the Insurance Company, the following words appear upon the policy issued by the company to the assured. 'If any error is found in the statements and answers of the applicant, note the same and return the policy to the home office of the company for correction.' By the agreement here quoted, from both the application and the policy issued to the assured, the power of the agent receiving the application and the power of the medical examiner of the Insurance Company was expressly limited, and notice of such limitation was brought home to the assured by the agreement incorporated in the application which he signed, and by this same agreement being embodied and being made a part of the policy issued to him by the Aetna Life Insurance Company. The power of the agent taking the application and the power of the medical examiner of the company being limited by this agreement, no verbal statement or declaration made to any agent of the company, or any examiner of the company, or any other person connected with the company, and not contained in his written application to the company, should
223 be taken or considered as having been made to or brought to the notice or knowledge of the Aetna Life Insurance Company, or as charging the said company with any liability by reason thereof."

Which instructions the Court refused to give, and thereupon, while the jury was still at the bar of the Court, the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

First. The instruction was legal and applicable to this issue as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for defendant, the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"I charge you that it is competent for any party, corporation or individual, employing an agent in the negotiation of a contract, whether of insurance or otherwise, to limit his powers, provided the limitation is brought home to the knowledge of the other contracting party, otherwise the principal will be bound by the apparent as well as the actual powers of the agent; and as in this case,

the limitation was made a part of the contract between the parties, it was binding upon them."

Which instructions the Court refused to give, and thereupon, while the jury was still at the bar of the Court, the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

224 Defendant says that the refusal of the Court to give this instruction was error, because:

First. The instruction was legal and applicable to this issue as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for defendant, the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"I charge you further that the stipulation between the parties limiting the powers of the soliciting agent and the powers of the medical examiner, and providing that the contract should be based upon the written application, was binding upon the parties, and it was, therefore, immaterial what may have been said by or to the agents at the time of making the application, or what may have been said by or to the medical examiner at the time he examined the applicant, which was not reduced to writing and presented to the officers of the company at the home office in Hartford, Conn."

Which instructions the Court refused to give, and thereupon, while the jury was still at the bar of the Court, the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

First. The instruction was legal and applicable to this issue as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

Be it further remembered, that prior to the charge of the Court to the jury, and to the argument of counsel, counsel for

225 defendant, the Aetna Life Insurance Company of Hartford, Conn., submitted in writing to the Court and requested the Court to give to the jury the following instructions:

"I charge you further that whether the statements and answers contained in the application of the assured were the same statements

made by him to the agents of the company securing his application and to the medical examiner of the company or not, yet when he afterwards received the policy, with a copy of the application attached and a memorandum indorsed thereon, calling his attention to the copy thus attached, with a request that any errors in the application be reported to the company for correction, it was his duty to report any answers incorrectly written down, and thus enable the company to correct them; and that by his failure to do so he must be presumed to have accepted the policy upon the faith of the answers therein contained, and to have acquiesced and agreed that it should remain as the basis of the contract of insurance."

Which instructions the Court refused to give and thereupon, while the jury was still at the bar of the Court, the defendant, the Aetna Life Insurance Company of Hartford, Conn., by its counsel, excepted to the refusal of the Court to give said instructions, which exception was duly noted and allowed by the Court, the grounds of said exception so presented and allowed being that the language of the request was a correct statement of the law applicable to the case.

Defendant says that the refusal of the Court to give this instruction was error, because:

First. The instruction was legal and applicable to this issue as presented by the defendant; and,

Second. Because the instruction requested was not covered by the general charge of the Court to the jury.

226 Be it further remembered, that after the presentation of said request to the Court, and after argument of counsel, the Court proceeded to charge the jury, said charge being in the following language:

Charge of the Court, May 21st, 1909.

The COURT:

GENTLEMEN OF THE JURY: The policies on which the plaintiff seeks to recover are contracts for life insurance. Life Insurance by a corporation imports a mutual agreement, whereby the company, in consideration of the payment by the person insured of a named sum, annually or at certain times, stipulates to pay a larger sum on the death of the assured. The company in determining whether or not it will insure takes into consideration, among other things, the age and health of the parents and relatives of the applicant for insurance, together with his own age, course of life, habits, present physical condition, and past disease from which he may have suffered, and the premium exacted from him is determined by the probable duration of his life, calculated upon the basis not only of the past experience of the company, but of others engaged in the business of insurance.

Here, the contracts having been made, and the policies of insurance having been issued, the death of the insured having ensued and been proven, the plaintiff is entitled to recover, unless a lawful defense or defenses are made and supported by the proof, and

the burden of proof is on the companies in the case of each poli
to show by a preponderance of evidence relating to the policies
spectively that the insured has been guilty of some conduct whi
would defeat that right to recover.

By preponderance of evidence is meant that superior weight
evidence upon the issue*d* involved, which, while not enough
wholly free the mind from a reasonable doubt, is yet sufficient
incline a reasonable and impartial mind to one side of the conte
tion, rather than to the other.

In determining where the preponderance of evidence lies, t
jury may consider all of the facts and circumstances of the ca
the witnesses' manner of testifying, their intelligence, their mea
and opportunities of knowing the facts to which they testified a
the probability or improbability of their testimony, their intere
or want of interest, and also their personal credibility
227 far as the same may legitimately appear upon the trial. T
jury may also consider the number of witnesses, though t
preponderance is not necessarily with the greater number.

Where there are apparently conflicts in the testimony, you shoul
if possible, reconcile those conflicts and impute them, if it may b
done, to honest mistakes in the observations or conclusions of th
witnesses. But if conflicts are irreconcilable, you should ordinaril
believe those witnesses, whose knowledge of the facts, and whos
manner of testifying seem to your minds to best entitle them t
belief. The interest and want of interest of the witnesses shoul
also be considered by you in determining the credence to which the
seem to be entitled. But the credibility of the witnesses, the valu
and the weight of their testimony is within the exclusive domai
of the jury.

The applications of the Prudential and the Aetna, the defend
ants will be before you. You should consider them together with
the policies of insurance. Both of the applications are made, b
their language, a part of the contract of insurance, and you should
consider all the declarations, statements and terms ogether, but the
statements therein may not be of equal importance in their effec
upon your duty.

You have heard much in the case about certain statements con-
tained in the applications for insurance as constituting warranties.
This is the contention of the defendants. The plaintiff's contention
is that such statements in the applications are merely representa-
tions. In determining the nature and the effect of these state-
ments in issue, you should understand the meaning of those terms,
and the difference in their legal effect. A Warranty is a representa-
tion or promise set forth in the policy, or by reference incorporated
therein, by which the terms of the policy is made an essential part
of the contract, and the untruth or non-fulfillment of which, it is
agreed, shall render the policy voidable by the insurer, wholly irre-
spective of the materiality of such representation or promise. On
the other hand, representations are statements made to give infor-
mation to the insurer, and otherwise induce it to enter into the
insurance contract, and unless distinctly material and made with

fraudulent purpose, do not void the policy. Warranties in life insurance policies in view of the inherent nature of the contract, are not favored by law.

It may be well conceived by the jury that the statements of an applicant for insurance, however sincere his purpose or unquestionable his character, may, so far as his health is concerned, not disclose all the "ills that flesh is heir to." Many maladies may
228 be incipient. There may be the unconscious though subtle and inevitable influence of germs of the bacillus of lesion of aneurism, which in their progress may either rapidly or gradually result in death. Men are not obliged to expend any portion of their income or capital in life insurance. There are many other methods of investment by which they may secure a provision for those whose support and happiness is their concern. It is optional to invest in farm lands and other real estate, in stocks and bonds in business or in life insurance. Multitudes of men particularly, perhaps, those who work on stated salaries believe the investment in life insurance the most certain means of accumulating resources for their loved ones. If then such men act with purity and integrity of purpose, if their statements are truthful and sincere as they understand them, if yielding to the solicitations of life insurance solicitors competing for the profits of the contract, and who not only submit the printed questions, but who write the answers with a view not to defeat, but to accomplish insurance, the applicant is led into mistaken representations these, when he has in life paid for his insurance and passed away, are not to be treated as voiding the policy unless they are so clearly and palpably material as to constitute a wrong against the insurance company, or unless even if less material, they are so fraudulent in character as will make the charge of fraud so preponderant that it must for the purpose of justice be deemed as vitiating the policy. It follows that where the parties to life insurance contracts do not use express terms to denote that the truth of a statement is a condition precedent to the policy, even though the application is formally made a part of the policy, the court will not conclude it to be a warranty without great and controlling reason. This is the law. The fact then that a statement is referred to in the policy, or even literally inserted therein, does not conclusively stamp it as a warranty. Again, in case answers in the application are warranted to be true, the warranties will not be extended beyond the answers as actually given, and only such statements as are strictly in answer to inquiries contained in the application are held to be warranties. If in the questions and answers there is any ambiguity for which the companies are responsible, or if the applicant is led into a mistaken statement through the urgency or pressing solicitation of their responsible agent or solicitor, such doubt should in common justice be resolved against the company in determining whether such answers are material, or whether they are to be held as fraudulent and false with
229 the result of vitiating the policy. Substantial integrity of conduct on the part of both the insurer and insured is the prime subject the law seeks to obtain.

Again, where statements are representations, they also are to be construed liberally in favor of the insured, and are required to be only substantially true. The law not favoring the doctrine of warranties in such contracts, it follows that where ever the jury is not justified, after consideration of the evidence (which, on such questions must preponderate in favor of the company), whether a statement is a warranty or a representation, such statement, if the facts of the case justify it, must be deemed to be a representation, and not a warranty. A warranty guarantees a statement to be true, whether it is true or not. A covenant, the language used in the Georgia Law, is merely an agreement that it is true. As otherwise expressed by high authority, a breach of warranty vitiates the insurance, though the insured made the warranty without knowledge of its falsity. On the other hand, all reasonable doubts as to whether statements inserted in or referred to in insurance policies are warranties or representations should be resolved in favor of the assured—that is, the person in whose favor the insurance has been issued.

The law of Georgia, while reporting that every application for insurance must be made in the utmost of good faith, and that representations are considered as covenanted to be true, otherwise the policy will be voided, also provides that a failure to state a material fact, if not done fraudulently, does not void the policy. On the other hand, the wilful and fraudulent concealment of such a fact which would enhance the risk of the company will have the effect to void it. What is here stated to be true of wilful concealment, is also true of wilful misrepresentation by the applicant or his agent as to any material inquiry made. It follows that under the law of Georgia, a mis-representation in statement or a concealment of fact must be material, or must be wilfully or fraudulently made in order to annul the insurance.

I may further instruct you that as to concealment the courts of the United States hold that it, too, must be fraudulent in order to defeat a recovery on a policy. If the applicant has answered the questions asked in the application, he is justified in assuming that no further information is required or desired. If the agent of the company presents the application and writes down the answers of the applicant, he is deemed as holding the pen for the company, and if he is content to leave a question unanswered, the applicant may be justified in assuming that the query is unimportant, and that the company requires no further information on that point. If, however, the applicant is purporting to answer a question gives only an incomplete answer, concealing the facts which should be properly stated in response to the question, and these concealed facts would increase the risk of the company, or are otherwise material, the policy is void, if such concealment is wilful and not merely an honest mistake or inadvertance. It is also true that a failure to disclose facts of which the applicant is ignorant, or which are immaterial to the risk, is no ground for voiding the policy.

These are general principles. To make them distinctly applicable to your duty, you are instructed that you must determine from all the facts, first, did Salgue make a misrepresentation or conceal-

ment of a fact of which he had knowledge. If he did not, the defense on this point must fail. Second, if he did, was such misrepresentation or concealment so material that it would have influenced one or both of the defendants not to issue the policy of insurance upon the respective applications. And third, in connection with this your inquiry will be, if such material misrepresentation or concealment as would have caused the defendants or either of them to withhold insurance was made, was it by Salgue wilfully or fraudulently done. In the absence of wilful or fraudulent misrepresentation or concealment of a material fact, the policy stands good and the insurance company must pay what it promised to pay by its policy, when it accepted the premium of the applicant.

If, on the other hand, you find that there was misrepresentation or concealment of which Salgue had knowledge, that it was material and would have influenced and controlled one or both of the defendants not to issue the policy of insurance, and third, that it was a wilful or fraudulent misrepresentation or concealment, then you should find against the plaintiff and in favor of the defendants as the facts may relate to the policy under consideration.

From this instruction as to your duty, you will at once perceive that it is highly important for you to carefully consider all the conduct of Salgue, as disclosed by the evidence, relating to the manner in which the insurance was accomplished.

In regard to the application and policy of the defendant, the Aetna Insurance Company, you should especially consider the incidents occurring in the office of the Bibb Brick Company, when Hawkins and Ray went there to get the application for that Company. W. E. Hawkins was the manager of that Company for the State of Georgia, and B. H. Ray was its soliciting agent.

231 Both of these witnesses testified that Mr. Salgue, at the time the insurance was applied for informed them that a physician had said he had heart trouble. Dr. Harrold, who was Examiner and acted for the Company, testified that Mr. Salgue informed him to the same effect at the same time. He also testified that Mr. Salgue told him one physician had said he didn't have heart trouble. Mr. Harrold representing the Company then and there examined Salgue in the most careful manner, according to his testimony, assured him that he had no heart trouble. One witness, Mr. Moore, declared that Dr. Harrold then and there said: "I will stake my reputation as an examining physician that you have no heart trouble." Mr. Hawkins then said, after Salgue made this statement, that the matter would be left to the Company's physician. These agents then immediately proceeded to write out, the one a binding receipt, and the other a note for Mr. Salgue to sign. This having been done, he was informed that the policy would take effect from the date of its issue. Some time thereafter, the note was sent by the Company to Mr. Moore, Secretary and Treasurer of the Bibb Brick Company, with the request that he pay it. The policy was sent with the note, and the note was paid and charged to Salgue's account with the Brick Company. This evidence is all undisputed and is highly important, particularly in connection with the manner in which this insur-

ance was solicited and pressed upon Salgue, and the hesitancy which he manifested in accepting it, the disclosures as to what the Doctors had said about his heart trouble, which he communicated to the Agents and to Dr. Harrold, and the anger he exhibited when he found he had been induced to sign a note, when as testified by Mr. Moore, he merely thought he was signing a receipt. All of this should be carefully considered by you in reaching a conclusion as to whether or not he had a purpose to secure insurance by acting in bad faith toward one or the other of these companies, as the evidence may relate thereto. In the opinion of the Court, if you find the evidence that Mr. Salgue frankly informed both the State Manager and the Local Solicitor of the Aetna Company, and contemporaneously informed Dr. Harrold, their Medical Examiner, that a physician had told him he had a heart trouble, but that he did not believe it, and Dr. Harrold, then and there acting for the Aetna Company, gave him a careful examination, stripped him sufficiently and applied the stethoscope, could discover no heart trouble, and in emphatic language informed him that he had none, and
232 with the knowledge of these facts, the agents of this Company wrote in response to the appropriate inquiry, if he had any heart disease, the word "No," you may well conclude, if you are satisfied that the evidence justifies it, that Salgue had no purpose to fraudulently mislead the company as to that matter, and the Court is further of the opinion, if, in fact, you find under those circumstances the company reached an erroneous conclusion, you may, if you think proper from the evidence, conclude that it was even more at fault, through the action of its agents, than Salgue for the mistake, and if both acted with integrity and it follows that one or the other must lose, the party most at fault should be the loser.

Now with regard to the plea that Salgue had a mitral regurgitant murmur of the heart, I charge you, as a matter of law, that here the burden of proof is again on the defendants. The evidence must preponderate against the plaintiff before the defense can prevail, and if proof fails to satisfy you, to the extent which the law heretofore explained to you has defined, that John A. Salgue intentionally misled the defendant companies or either of them, that he knew, or had reason to believe, that he had a material and serious disease of the heart which would seriously affect the probable duration of his life; if it fails to show you that he knew or had reason to believe that he had such a disease, and, thus knowing and believing, that he intentionally and fraudulently withheld the facts from the defendant companies, or either of them, you would not be justified in defeating a proper recovery on this account as to such company with relation to which he was not guilty of such concealment and fraud.

With regard to the statement that he was in good health, if you believe that Salgue realized that he was not in good health, and had such a complaint or complaints, as he knew or should have known would probably shorten the duration of his life, and affect the chances of his being accepted by one or both defendants for insurance, and if he then stated wilfully and knowingly that he was in good health, and concealed the fact that he had a complaint or

complaints which would seriously affect the risk of the company, then you should find as to the defendant or defendants to whom he made such statements or concealments that such defendant or defendants is or are not liable by reason of that statement or concealment. They are not liable because, if you so find, Salgue made the statement or concealment. But, if on the other hand, you believe from the perponderance of evidence that Salgue throughout the transactions with the defendants acted with entire good faith, if
233 he honestly believed that he was in good health, and had no such serious complaint as would materially affect himself as a risk for insurance, and if he in good faith made all such disclosures and answers to the questions propounded to him as he ought to have made, and if any misstatement or concealment was made inadvertently and honestly without intent to deceive and such misstatement or concealment was not material to his value as a risk, then you would be authorized with regard to such circumstances to find against the appropriate defendant or defendants relating to whom Salgue was not guilty, and on such policy, if he was otherwise free of fault, Salgue's administrator would be entitled to recover.

With regard to the defense that Salgue replied "No" in answer to the question whether he had dyspepsia, when he had chronic acid gastritis, you should consider all evidence as to how serious that complaint was, and how materially it would affect the risk of the insurance of Salgue. You may also consider whether Salgue from ignorance that dyspepsia and gastritis were the same thing, answered as he did. If his answer was in good faith, or if he had sufficiently recovered after his treatment by Dr. McAfee, that he could in good faith have answered "No" that he did not have "dyspepsia" at the time of that application, then that answer would not avoid the policy. If on the other hand, his answer was material to the risk, and was wilfully made not in good faith, when in fact he had "dyspepsia," and if you find that such complaint was material and would affect his application for insurance, then as to such policy you should find against the plaintiff.

As to the number of physicians who had attended him, as to previous illness, and as to other questions in the applications which you will find from the evidence, the Court charges you that the presence or absence of good faith on the part of John A. Salgue throughout would be exceedingly important to determine whether or not his ommission to mention the number and names was so material to his being accepted as a risk and of such fradulent character as would void one or both policies, as the facts may appear in each separate case. If you are justified in concluding from the evidence that it was a mere case of honest forgetfulness or misapprehension, I charge you that it would not, in itself, render the policy void. If you believe that the insured was guilty of fradulent concealment of the names and numbers of his Doctors, who contributed a variety of advice, diagnosis, medication, or lavage, for his assistance, you ought to find against the plaintiff in either or both cases
234 where you find such to be the case. But if you believe that it was an honest omission, and not material to the risk, or an inadvertently erroneous statement, you ought not to find against

the plaintiff because he did not enumerate all of the medical men who had served him.

To sum up at this point the instructions in this case, notwithstanding its great prolixity, the multitude of witnesses and interrogatories, the true issues is this,—did John A. Salgue apply for one or both of these policies of insurance honestly and in good faith? Did he truthfully and sincerely communicate to one or both companies the answer to the questions propounded which were material for its protection? If he did so, withholding nothing fraudulently, concealing nothing fraudulently, and not intending to deceive, his legal representative is entitled to recover the amount stipulated in the policy, as against the defendant or defendants with whom he was so free from fault, with interest at seven per cent, from the date of proofs of loss and costs of such action. If, on the other hand, one or both of the defendants has introduced evidence which preponderates to show that John A. Salgue sought to secure insurance with such defendant or defendants dihonestly, knowing or having reason to believe that he was seriously or materially afflicted as charged, or made other fradulent misrepresentations or material concealments, and with such knowledge, did not communicate it to the defendant or defendants, but fraudulently withheld it, the plaintiff would not be entitled to recover, and as to the defendant or defendants to whom such facts may be found to be applicable, you should find for one or both as the case may be, with costs of suit.

You should bear in mind throughout this case that the burden of proof is on the Insurance Companies to demonstrate to your moral and reasonable satisfaction the existence of such conduct on the part of Salgue as should under the rules I have given you defeat the policy or policies which were issued to him. They charge gross fraud upon his part. They charge an attempt to obtain over insurance, and they seek to ascribe this to Salgue, because they contend he knew the precarious tenure he had on life. Stripped from the technical verbiage of the pleadings, this is the substance of the defense. This is charging upon him a degree of moral terpitude, which the jury should not find to have existed, unless they have sustained the burden of proof by such preponderance of evidence as would produce on the minds of the jury a moral and reasonable conviction
235 that these charges are true. The jury then, after considering all the evidence should carefully inquire whether there is to be gathered from it a purpose on the part of Salgue to accumulate insurance by gross fraud upon the insurance companies, or whether he acted with common honesty and good faith.

The Court might sum up in detail the evidence, as we have the right to in courts of the United States, but the case has been so protracted and you must be so weary that I will not attempt to do this, but will call your attention to certain general considerations or inquiries you should make. You must find all the facts for yourselves, and make such conclusions from those facts as under the law you may find the justice of the case and the rules of law demand. What I have said and what I shall say will be to assist and not to control your determinations. First, did Salgue's conduct show any anxiety or solicitude on his part to obtain this insurance, or on the

ther hand, was it largely brought about by the anxious and reiter-
ted solicitations of the defendant's local agents. On this subject
ou will recall the evidence. I repeat that you must find the facts
r yourselves. What I say is not to control, but merely to aid you.
ut I will ask you to consider if there is any material difference be-
reen the witnesses for the plaintiff and for the defendant as to the
igerness and insistency of the insurance agents, including the
gent for the Prudential, Mr. Adams, and the agents for the Aetna,
Ir. Hawkins and Mr. Ray, to consummate as early and as certainly
possible the insurance on the life of this man. If he was hesi-
nt, if he attempted to delay action, if he required that the poli-
es should be produced and submitted to him, in order that he
ight contrast their relative benefits, if he disclosed to these agents
to either of them the difficulties he would have in paying for the
surance; if, in short, his actions were brought about not by facts
hich indicated a sinister and fraudulent purpose on his part to
tain insurance, with the view of speedily securing unwarrantable
in for his family, and of inflicting unmerited and unlawful losses
on the companies or either of them, if you find that all of this is
ue, you may, if you think proper, regard this evidence as portray-
g the natural and obvious behavior of an honest man, who while
desired insurance, was in no haste to obtain it by fraudulent
ethods, rather than as evidence of gross fraud, which he had medi-
ed against the companies or either of them, and was now seeking
to carry into effect.

These, however, are matters entirely for your determina-
tion, and you must consider all the evidence in the case to the
ntrary, for the plaintiff and that upon which the defendants also
y, and you must conclude for yourselves whether they illustrate
normal and upright conduct of an honest man, or whether they
an indication of that fraudulent and unlawful purpose which is
rged by the defendants, accompanied by such degree of misrep-
entation and fraudulent conduct as would vitiate the policies.
this contention, I charge you that an important consideration
the general character of the man for uprightness and probity.
this subject, there is no dispute. The proof is conclusive that
was a man of good character. Indeed, the enthusiasm with
ich those who knew him spoke of his irreproachable character
noteworthy. Now, it is true that sometimes men of good charac-
do commit offences marred by moral terpitude. They are some-
es guilty of fraud, sometimes of crime. But good character is
r a fact of great significance, especially in those cases which in-
re the presence or absence of a guilty purpose. Good character
the main is consistent with innocent and upright intentions and
pose, unhappily not always so. It may make that clear which
as otherwise doubtful. It may make that doubtful which seems
erwise clear, and while it is not controlling, it is always a fact
which the jury should accord the greatest consideration and in
case such weight as clear-sighted and upright men should give
Important at all times, certainly it is not least important when
mouth of the principal actor has been closed by death.

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An important consideration in the case is, did Salgue truly kno
and with such knowledge did he fraudulently conceal the fact th
he had a mitral regurgitant murmur of the heart? In other wor
does the evidence preponderate to show that he had knowledge th
he had heart disease. You have heard what I have said with rega
to the Aetna Life Insurance Company on this topic. As it relat
to the Prudential Insurance Company of America, it is perha
proper that I should say more. As I recall the evidence, Salgue w
first examined by Dr. Little for the Penn Mutual Company. D
Little told him he had heart trouble and to go and consult his famil
physician. He then went to Dr. McAfee and imparted what D
Little had said. Dr. McAfee agreed with Dr. Little. Mr. E. H
Holland, the agent for the Sun Life Company, testified that on
date which was shortly after Dr. Little's examination of M
237 Salgue an application for insurance in his company was s
cured on Salgue's life by a Mr. Nowell. The Medical Ex
aminer of this company was Dr. Barron. His testimony is un
equivocal. He states that he carefully examined Salgue, and found
no indications of heart trouble whatever. He testified: "I ex
amined Mr. Salgue for the Sun Life on the 29th of June, and fo
the Provident Savings on July 1st, 1905. I stripped Mr. Salgue to
his flesh and made a thorough examination, and found nothing
detrimental to his receiving insurance and recommended him. I
did not find any disease of the heart. I did not find any mitral mur-
mur or displacement of the apex of the heart or abnormal enlarge-
ment of the heart. I did not discover either of these symptoms."
On these examinations, both for the Sun Life and the Provident
Savings the insurance examiner approved his application. This
was about a week before the applications to the defendants. The
policies were issued, but it appeared that Mr. Salgue held the Sun
Life policy for some months before accepting it, and the policies for
a considerable amount, which you will recall, issued upon this ex-
amination for the Provident Savings Life, Mr. Salgue rejected alto-
gether. On July 6th, after these examinations by Dr. Barron who
it appears from the evidence had large experience in such work,
Mr. Salgue, after a somewhat persuasive and persistent interview
with Mr. Charles M. Adams, the General Agent of the Prudential
Company, went to Dr. Winchester, the local Examiner for that
Company, and for many other companies. This physician testified
that he made a thorough examination and found no heart trouble
whatever. He, however, said that a mitral murmur might be evi-
dent at some times and not at others. Dr. McAfee agreed with Dr.
Little, and so did Dr. Ross, but Dr. Gostin, who treated Salgue in
his last sickness, wholly repudiated the contention that he died from
mitral murmur, or that he had a diseased heart, and gave as the
diagnosis of the cause of his death an aneurism, resulting from sud-
den and great exertion on his part in lifting a barrel of iron cast-
ings. Dr. Harrold, after a careful examination, and immediately
after Mr. Salgue had exerted himself in lifting a box filled with
watermelons, determined that there was no evidence of heart trouble
which could be developed by the stethoscope, or by other approved

methods of examination, and passed him, as we have seen, as a good risk for insurance with the Aetna Company. You should also bear in mind on this subject the evidence of Dr. McHatton. He testified that he examined John A. Salgue for insurance for the Volunteer State Life of Chattanooga, in July, 1905. This examination
238 was after the Prudential and Aetna applications were concluded, if I mistake not. He testified: "I discovered an enlarged heart with mitral murmur. That is what I stated, 'the applicant has a mitral murmur, first sound not strong, apex about an inch below the normal line and displaced to the left.'" He further testified that he saw Mr. Salgue "on the 13th of July, 1905; saw him on the 2nd day of March, 1906, the 3rd, the 20th, the 30th; April 13th and 15th, 1906." "When I saw him," said the Doctor, "the last series of visits that I made him, his condition was exactly what you would have expected, taking into consideration his condition at the time of the examination." That was "the progressive course, the continuance of the original organic disease." The manner of his death "would be one of the natural terminations of his type of condition. I just went on and treated him for his increased heart weakness." He did not advise Salgue's employers before the insurance was taken. "I saw one of his empolyers sometime after the insurance. I cannot state how long afterwards, and told him so far as his usefulness was concerned, the man's days were over. I think it was a considerable time" after the examination. "It may have been after March, 1906."

On cross-examination, Dr. McHatton testified: On July 13th, he did not require any treatment. "On July 13th, his cardiac condition was not bothering him, and he had no reason to know it existed from his own feelings, and when I heard his heart performing its duty, we do not give any medicine because nature is taking care of it." On July 13th, "there was no reason why he should know anything about it." Dr. McHatton said he "did not tell Salgue anything about it." He was an unusually robust looking man; I did not see," said the Doctor, "why it should give him any trouble at all." On July 13th, 1905, "I should not have treated him at the time" with digitalis or strophanthus. I never saw him professionally between July 13, 1905 and March 2, 1906; at that time his heart was giving him trouble—in March, 1906." At that time or in July 1905, there was no trouble with his health other than the heart trouble, so far as he could discover. The heart changes could only be discovered by an examination. It was not a thing the patient would know. Any doctor who would examine with sufficient care "should have discovered it; that part of it was not changeable; the murmurs are changeable, but the displacement and enlargement
are not changeable." Any doctor "ought to have found the
239 displacement of the apex." I think the Doctor also said that not to have found it was inexcusable. You will remember.

On re-direct examination he testified "that during that period he could have been examined and not had the murmur, but the other part was permanent. The murmur sometimes disappears and re-

turns, that was the least part of it, the enlargement of the heart was more important than the murmur."

Asked as to when he examined Mr. Salgue for the Volunteer Life and rejected him, if he told him the condition of his heart, the witness said: "No, sir; I did not tell him anything." He added that he did not tell Salgue he had rejected him. "Sometimes we reject or do not recommend a man and the Medical Director does not see fit to take that recommendation, so we never know until a policy returns whether it is accepted or not."

I think it is proper also to call your attention especially to the testimony of Dr. C. C. Harrold. He was Medical Examiner for the Aetna Company in 1905; was telephoned for, and went out to the Bibb Brick Company and examined Salgue. The first part of the examination was in the front office, and the physical examination in the room in the back. I asked Salgue those questions and wrote down his answers.

I asked him if he had heart disease. He said he thought he did not; there was a discussion after I asked that question and then I wrote the answer "No." I asked him closely as to any symptoms of heart disease and he said he had none of them, and that he had never been treated for heart trouble, so I then put down that answer "No" and went into the physical examination later on. He told me that either Dr. Winchester or Dr. Little, I do not remember which, he said one of those doctors told him he had heart disease and it scared him so that he went to the other one and they told him he did not have heart disease nor any sign of it, those were the two names he mentioned. My recollection is he referred to Dr. Ross as having treated him for some slight trouble several years previously, from which he had completely recovered. "I examined him first with my stethoscope, listening to the action of the heart. The light was not very good in the room and I carried him over to the window, and I remember there was a box by the window so we could not get close to it, and he moved the box to the other side of the room so that I could get near the window and I examined him there with plenty of light as carefuly as I could. I found nothing wrong with his heart, I did not find any murmurs, did not find it was displaced, did not find his pulse was too rapid, found
240 nothing wrong with his heart." He further testified: "if this condition existed, he should have found them." That was his language.

On cross examination, he said: "I don't think he said one doctor told him he had heart disease, trouble with his heart is my recollection. If there had been a mitral murmur there I should have recognized it. If the heart had been displaced I should have recognized that. A man may have weakened heart muscles without it showing in his general appearance."

"The box that he moved from in front of the window had watermelons in it, is my recollection. I offered to help him move it and he said, no, he could move it. It was about the average size box we see around country homes with wood in them. I remember he moved it very easily. Sudden exertion would have increased the

rapidity of the heart's action and would increase the distinctiveness of the mitral murmur, if there was such a murmur. I applied the stethoscope immediately."

You should consider also the evidence of his employers, Messrs. Moore and Massee, the continued and strenuous character of his work as superintendent of the brick yard, his labors in the clay pit when more than once there was a flood in the river, the abnormal hours of work which he daily endured, the night work which at times was superadded, his remarkable physical vigor, and his apparent robust health. These gentlemen both testified that in the four years of service with them he lost but two days. His closest neighbor, Mr. Reeves, an intimate friend, testified that he had but one little sickness; and his widow, with whom as a wife he lived during the entire period, testified not only to his uniform good health—except as to the malarial attacks possibly ascribable, in view of the testimony of a physician who attended him and his employers, to the low swampy land in which his labors were done, also to his fine appetite, and the ease with which he slept.

Does this evidence, then, preponderate to show that this man had the organic disease of the heart claimed? There is the testimony of Dr. Little, Dr. McHatton, Dr. Ross, and Dr. McAfee that he had it. There is the testimony of Doctors Harrold, Barron, Gostin, the testimony of his employers and the testimony of his wife, all of which you should consider in so far as it tends to show that he did not. Does it preponderate to show that he had the organic disease of the heart claimed, and if it does, does it preponderate to show that he knew it, or believed it, and so knowing or believing fraudulently concealed it from the defendant companies? We have seen that he did not at least wholly conceal it from the Aetna. Did
241 he wilfully and fraudulently conceal it from the Prudential, whose physician examined him, and could find no trace of it.

In determining this question we must necessarily leave all personal considerations and personal attachments to physicians out of the question. None of these witnesses are impeached. They are all presumed to have spoken the truth, as they understood it. If they do differ, their differences may be regarded, if you think proper from the evidence, as the failure of high mentalities, scientifically trained, to concur upon the presence or absence of an affliction which may in some sense be regarded as latent or occult and wholly discoverable by a scientific examiner. It is for you to say, gentlemen, whether all of this evidence preponderates to produce in your minds the conviction that Salgue knew that he had heart disease, and that he fraudulently concealed that knowledge from the defendant, Prudential Company.

It is, however, insisted that Salgue was guilty of fraud which should vitiate the policies because he withheld the fact that he had been rejected by the Penn Mutual, and it is insisted by defendant's counsel that the facts show a rejection to be determined by the court as a matter of law. The court has not been able to agree with this contention, and leaves the question to the jury, it being a mixed question of law and fact. It does not appear, so far as I

recall the evidence, that the Penn Mutual ever definitely informed Salgue that his application was rejected, although Dr. Little informed him that he could not recommend him. Dr. McHatton, you will recall, testified that sometimes companies did not heed the recommendations of the local examiners. But the application, as I recall the evidence, was never sent to the home company at all. Dr. Little gave it to Anderson Clark, the local agent of that company, and Anderson Clark himself testified that he told Salgue if he would pay Little's fee he would not send the application to the company and that it would not then be regarded as a rejection. The fee was paid, and if you believe from the evidence that Salgue in good faith accepted the statement of Anderson Clark as true, and that when he said he had not been rejected he in good faith acted upon the information thus imparted to him by the Company's agent, you would not be justified on this ground, so far as that company is concerned, in holding that fraud should be imputed to him because he said he had not been rejected for insurance. The question depends upon his integrity of purpose, and the presence
242 or absence of good faith on his part, and that is entirely a question for your consideration.

Much has been said about chronic acid gastritis, for which Dr. McAfee testified that he had treated Salgue for a number of months, but much more was said, however, on this subject by counsel for the plaintiff than by counsel for the defendants. It is contended that this malady, if it existed, was the cause of the death of this insured. It does not appear to have affected his activity, his sleep, his physical vigor, or general usefulness; and Dr. McAfee introduced as a witness for the defendant, who was himself an insurance examiner testified that it would not have been a cause for rejecting him as an applicant for insurance, but merely a cause for postponement. We gather from the testimony of Dr. McAfee, if I remember it, but you must recall it for yourselves, that his last treatment of Salgue was on the 13th of July, 1905, for chronic acid gastritis, in the course of which he used a siphon, the use of which so enkindled the ire and prompted the animadversions of one of the plaintiff's learned counsel. We find nothing further in the evidence with reference to this malady and Salgue did not die until May 27, of the following year. May it not be, then, that notwithstanding the derogatory remarks of counsel concerning this treatment that it had the desired effect, and Salgue was cured by Dr. McAfee many months before his death that is, cured of gastritis. This may be considered by you, with all of the other evidence, upon the question of the materiality and good faith of Salgue's answers. If this is true, it may serve to confirm the well known lines of Homer:

> "A wise physician, skilled, our woes to heal,
> Is more than armies to the commonweal."

Gentlemen, you should strive to attain simple justice in this case, and you can only do so by confining your attention to the evidence and the law as given you in charge in this case. You are not trying a cause of pathetic incidents on one side and a corporation on

the other. In this case you must write seperate verdicts. If you should find for the plaintiff against the Prudential Insurance Company of America, your verdict would read, in the action of the plaintiff against the defendant, Prudential Insurance Company of America, "We, the jury find for the plaintiff the sum of five
243 thousand dollars, with interest at 7% from July 27th, 1906, with costs of suit."

Should you find for the defendant, Prudential Insurance Company of America, that they are not due to the plaintiff the amount of their policy, since they admit that they are indebted in the sum of $210.00, the amount of the premium paid by Salgue, and since they have tendered that amount, your verdict should read, in the action of the plaintiff against the defendant, Prudential Insurance Company of America, "We, the jury find for the plaintiff the sum of $210.00, with interest at 7% from July 29th, 1905, to the 30th day of September, 1907, without costs,"—that being the date of the tender back of the premiums.

Should you find for the plaintiff against the defendant, Aetna Life Insurance Company, your verdict should read, in the action of the plaintiff against Aetna Insurance Company, "We the jury find for the plaintiff the sum of six thousand dollars, with interest at 7% from July 27, 1906, with costs of suit."

Since the Aetna has made no tender of premiums, if you find against the plaintiff and for the Aetna, your verdict should read, "We the jury find for the defendant, Aetna Life Insurance Company."

Your verdict will be written on the declaration respectively as to the Insurance Companies.

Exceptions to Charge.

Mr. BLACK: If your Honor please, I handed your Honor some requests to charge. I want to call the Court's attention to one of them. This is the request that I shall ask the Court to make: (Reading).

"The defendant, the Prudential Insurance Company of America, requests the Court to charge as follows: Question 4-B of the application of said John A. Salgue to the said Prudential Insurance Company is as follows: 'Has any company or association ever declined to grant insurance on your life or issued a policy of a different kind, or for a sum less than that applied for? (Answer 'Yes' or 'No'). The answer to this question is "No." The defendant insists that this answer is false, and says that the said Salgue in the month of June, 1905, prior to the time of making this application, applied to the Penn Mutual Life Insurance Company for a policy, and was declined. If you believe from the evidence
244 that the said Salgue made application to Anderson Clark, the agent of the Penn Mutual Life Insurance Company for insurance, and that this application was signed by the said Salgue, and that this application was handed by the said Anderson Clark as agent of the Penn Mutual Insurance Company, to Dr. Little,

examiner for the said Penn Mutual Company, for examination, and that Dr. Little as said examiner examined the said Salgue and stated to the said Salgue that he had heart trouble, and that for this reason he could not pass him: then I charge you that this would amount to a declination by the Penn Mutual Life Insurance Company of the application for insurance made to it by the said Salgue; and if you believe from the evidence that such application was made and such declination was made, then I charge you that the answer of Salgue to this question was false, and that it was warranted to be true and that it was as to material matter, which would tend to change the nature, extent or character of the risk assumed, and that in this event the plaintiff could not recover."

Your orator charged differently from that and I simply desired to call the Court's attention to that at this time.

The COURT: Will you be good enough to read the memorandum I have made to your requests?

Mr. BLACK: This is my memorandum.

The COURT (Reading memorandum made by the Court): "In so far as these requests to charge are deemed correct, the Court had preferred to announce the principles involved in language other than that adopted by the learned counsel for the defense." (Top of requests to charge of the Prudential Insurance Company).

Mr. BLACK: If your Honor please, I think that applies to all save one request, to which I have called your Honor's attention. I think on this request, it is a matter of law, and the Court and I have differed about it, and that is the reason I call it especially to your attention.

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The COURT: I have given very close attention to it when you called my attention to it, and that is the entry I have made.

Mr. BLACK: I desire only as to that one charge to note an exception.

Judge MILLER: May it please your Honor, I desire to note an exception, first may it please your Honor, I understand from that 111th case—I have to remember those requests—if the Court will notice, the Court not giving in charge to the jury the 1st and 2nd requests to charge the two propositions taken from or contained in the 120th Georgia; also the 3rd, may it please your Honor, which is a reference to Salgue's answer to the Aetna application 'No,' when asked if he had heart disease; also the Court's refusal to charge the 4th, which was the answer to the question, asking the names of all the physicians. Also, may it please the Court, the 5th, which contained the question, 'Has any proposal or application to insure your life been made to any company, association or agent, on which a policy of insurance is now pending, or has any such proposal or application ever been made for which insurance has not been granted.....?"

Also, the 6th, may it please your Honor. It deals with this particular and very brief question—'Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? and if so, state particulars.'

I strike the 7th, may it please the Court, on the gastritis question.

That involves the dsypepsia question in the application upon which the Court has charged fully, and twice in the course of the charge, taking it from two different points of view, which are entirely satisfactory to us.

I also except to the failure to read the 8th, may it please the Court, the proposition that, if the previous charges had been given as requested, the jury would be controlled in finding their verdict by them, notwithstanding they might believe from the evidence that Salgue died from thoracic aneurism and not from heart disease; and that your Honor has not charged.

The COURT: Do you desire exceptions noted to all of those failures to charge of the Court?

Judge MILLER: Yes, sir.

246 The COURT (to the stenographer): Make the memorandum.

Judge MILLER: With the Court's permission now, I will number these last. They are not numbered. The other is Number 7, the last were not numbered. They will be 9, 10 and 11 and the 12th. To avoid reading these, I will simply state that these 4 grounds, 9, 10, 11 and 12, all have reference to the effect of the notice to the agents of the company and were prepared by Mr. Hall.

May it please your Honor, I ask to note an exception to that portion of the Court's charge in reference to the willful concealment—the exception taken there, may it please your Honor, is this, that while the Court gave the last request, I handed up merely in the words of the request, the word 'fraudulent' was added, I believe to the word "wilful," either "fradulent and wilful" or "fradulent or willful.' I don't know how the context is there. I took it from the statute, which merely says, "the willful concealment of such a fact." I note an exception to the fact that the Court added the word "fraudulent," and did not give the request in the language asked for.

I beg to note an exception further to the same conjunction of words. Your Honor was instructing the jury as to the effect of the misrepresentation of facts, which was charged there as a willful and fraudulent misrepresentation or concealment—I cannot recall the exact portion of the charge, of course.

I beg to further note an exception to what I think was an oversight on the part of the Court as to the evidence of Hawkins. In charging the jury that after Hawkins and Ray had been told by Salgue that he had heart trouble, and Harrold had also been told the same thing, and came out and made his statement that he found no trouble, and would stake his professional reputation that he had no heart trouble, Hawkins then said, that is a matter for our physicians with which we are not concerned and proceeded to make out the policy.

The COURT: I think I said that.

Judge MILLER: You did say that—that is the trouble.

247 What I am asking an exception to be noted for is that when Hawkins made that statement to Salgue, Harrell had not come. He was sent for for that purpose.

The Court: I will tell the jury to correct me in that, if I am wrong—they will remember the evidence.

Judge MILLER: That is entirely satisfactory.

One further exception, may it please your Honor, that is the instruction to the jury that if they believe from the evidence that Salgue had told Ray, Hawkins and Harrold about being previously informed that he had heart trouble by other physicians, the jury would find from that—and after, I will add—and afterwards, with that knowledge and Harrold's own statement to Salgue, they then wrote this application, the jury would have the right to conclude that Salgue had no fraudulent intent, but on the contrary the fraud, if any, would be upon the agents representing the Aetna Company. That is as near as I can recall it. That is the idea I gathered from the charge.

The COURT: Of course, your exception relates to that portion of the charge, and will be compared with the literal expressions used.

Judge MILLER: One more, may it please your Honor, and that is as to the Court's instruction to the jury as to the information from the failure of Salgue as to the cause of his rejection by the Penn Mutual, as to whether he was informed by any one connected with that transaction that he had heart trouble, the Court's statement to the jury being that it nowhere satisfactorily appeared in the evidence—I am just giving my recollection of it—that Salgue learned from anybody that Little had rejected him on account of heart trouble. My recollection is that Clark testified, Anderson Clark, and said it was in a letter, and we served notice for that letter, and Clark gave the substance of it, the plaintiffs responding that they had no such letter—the letter containing the statement that he could not pass him, that he was rejected, that he would withhold the application for the policy so that he would not be classed as being rejected, and that Dr. Little had refused to recommend him favorably.

248 The COURT: I say as to that like I say about the other portions of the charge, that my statement was merely as to my recollection of the facts to assist the jury, and iff I am wrong you will not take those statement and act upon them. I do not mean for my statement to control, you must find the facts for yourselves.

Judge MILLER: That is all right.

The COURT: Hand the papers to the jury. (After the jury has just retired—addressing counsel). (Upon a request from the jury). Gentlemen, the conclusion of the charge was merely an instruction how to write the verdict. The jury say they would like to have that to know how to write their verdict. I can just tear off that last page.

(Counsel expressed assent).

Mr. BLACK: No objection to that.

Conclusion.

After the argument of counsel and the charge of the Court to the jury, the jury retired, and afterwards, on the 21st day of May, 1909, returned into Court with a verdict in favor of the plaintiff against

the defendant, the Aetna Life Insurance Company, for $5,000.00 principal, and interest from July 27, 1906, at 7 per cent. per annum and costs of suit.

On the 1st day of June, 1909, judgment in favor of the plaintiff was duly entered on said verdict for the principal sum and interest as found on said verdict against the defendant, the Aetna Life Insurance Company of Hartford, Conn., with costs of suit.

By order of the Court, passed at the May term, 1909, of said Court, it was provided that, it being represented to the Court that it was the intention of the defendant to prosecute by writ of error to the Court of Appeals for the Fifth Judicial Circuit, the de-
249 fendant, the Aetna Life Insurance Company of Hartford, Conn., have until the first day of September, 1909, in which to present and have allowed, settled and certified its bill of exceptions in this cause, and that execution be stayed until such time.

By further order of the Court, passed at the May term, 1909, of said Court, it was provided that, it being represented to the Court that it was the intention of the defendant, the Aetna Life Insurance Company of Hartford, Conn., to prosecute a writ of error to the Circuit Court of Appeals for the Fifth Judicial Circuit, that the defendant, the Aetna Life Insurance Company of Hartford, Conn., have until October 1st, 1909, in which to present and have allowed, settled and certified its bill of exceptions in this case, and that execution be stayed until such time.

Said May term, 1909, of the Court is still in session at the time of the presentation, settlement and certifying hereof, and now, in furtherance of justice, and that right may be done to the defendant, the Aetna Life Insurance Company of Hartford, Conn., presents the foregoing as its bill of exceptions in this case, and prays that the same may be settled, allowed, signed and certified as provided by law.

MILLER & JONES,
CHAS. H. HALL,
Attorneys for the Defendant, The Aetna Life Insurance Company of Hartford, Conn.

A. L. MILLER,
M. D. JONES,
CHAS. H. HALL,
Of Counsel.

We agree that the foregoing bill of exceptions contains a full, true and complete brief of the evidence introduced in this case, and consent that the evidence as briefed may be used in this bill of exceptions, and further agree that the bill of exceptions contains true copies of all documentary evidence introduced in said cause.

OLIN J. WIMBERLY,
MINTER WIMBERLY,
JESSE HARRIS,
Attorneys for the Plaintiff.
MILLER & JONES,
CHAS. H. HALL,
Atty's of Record for Def't.

250 *In re Bill of Exceptions.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

Action on Insurance Policy.

JOHN T. MOORE, Administrator of John A. Salgue,
vs.
ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

Action on Insurance Policy.

Consolidated for Trial.

The foregoing bill of exceptions is correct in all respects, and is hereby signed, approved, allowed and settled, and made a part of the record herein.

Dated this 28 day of Sept., 1909, the day of the term of said Court, and done in open Court.

EMORY SPEER,
U. S. Judge.

[In ink:] Ent.

J-69

Filed Oct. 1, 1909.

CECIL MORGAN,
Deputy Clerk.

251 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, Tomlinson F. Johnson, Clerk of the Circuit Court of the United States for the Southern District of Georgia, at Macon, do hereby certify that the foregoing three hundred and thirty-eight (338) pages contain a true and correct copy of the record, bill of exceptions, assignment of errors, and all other proceedings in the case lately pending in said Court, numbered 392, on the law docket of said Court, entitled John T. Moore, Administrator of the Estate of John A. Salgue, deceased, versus The Aetna Life Insurance Company of Hartford, Connecticut, and consolidated for trial with the case of John T. Moore, Administrator of the Estate of John A. Salgue, deceased, versus The Prudential Insurance Company of America, as the same now appear of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at Macon, in said District, on the 25th day of October, A. D. 1909.

[SEAL.]

TOMLINSON F. JOHNSON,
Clerk U. S. Circuit Court for the Southern District of Georgia.
By LENOIR M. ERWIN, *Deputy Clerk.*

252 Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D. 1910, at Atlanta, Georgia, and on the third Monday in November, A. D. 1910, at New Orleans, Louisiana, before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable Harry T. Toulmin, District Judge.

Be it remembered that heretofore to-wit: on the sixteenth day of November, A. D. 1909, a transcript of record, pursuant to a writ of error from the Circuit Court of the United States for the Southern District of Georgia, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Fifth Circuit, wherein The Aetna Life Insurance Company is plaintiff in error, and John T. Moore, Administrator, is defendant in error, which said transcript of record was filed and docketed in said Circuit Court of Appeals as No. 2035.

That thereafter the following proceedings were had in said cause in said Circuit Court of Appeals, viz:

253 And on the fifth day of October, A. D. 1910, in the record of the proceedings of said Circuit Court of Appeals is an order transferring in said cause in the words and figures following to-wit:

Order Transferring.

OCT. 5, 1911.

No. 2035.

AETNA LIFE INSURANCE COMPANY
vs.
JOHN T. MOORE, Adm'r.

Ordered that this cause be, and the same is hereby transferred to New Orleans.

And thereafter on February 1st, A. D. 1911, in the record of the proceedings of said Circuit Court of Appeals is an order designating Judge in said cause in the words and figures following to-wit:

Order Designating Judge.

FEB. 1, 1911.

Ordered that the Honorable Harry T. Toulmin, United States District Judge for the Southern District of Alabama, be, and he is hereby designated to sit, act and take part in the hearing, argument, submission and determination of the following causes now pending in this court: No. 2035, The Aetna Life Insurance Company vs. John T. Moore, Administrator, and No. 2090, Carolina Portland Cement Company vs. Charles Anderson, Master, etc.

254 *Argument and Submission.*

FEB. 22, 1911.

No. 2035.

THE AETNA LIFE INSURANCE CO.
vs.
JOHN T. MOORE, Adm'r.

On this day this cause was regularly called, and after argument by A. L. Miller, Esq., for plaintiff in error, and Minter Wimberly, Esq., and Alexander Akerman, Esq., for defendant in error, was submitted to the court.

And thereafter on March 28, 1911, an opinion of said Circuit Court of Appeals was filed in said cause in words and figures following to-wit:

Opinion.

255 U. S. Circuit Court of Appeals. Filed Mar. 28, 1911. Charles H. Lednum, Clerk.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2035.

AETNA LIFE INSURANCE COMPANY
v.
JOHN T. MOORE, Administrator.

Error to the Circuit Court of the United States for the Southern District of Georgia.

Before Pardee and Shelby, Circuit Judges, and Toulmin, District Judge.

By the COURT:

We find no reversible error on the record, and the judgment of the Circuit Court is affirmed.

Pardee, Circuit Judge, does not concur.

256 And on the twenty-eighth day of March, A. D. 1911, in the record of the proceedings of said Circuit Court of Appeals is a judgment in said cause in the words and figures following, to-wit:

Judgment.

No. 2035.

THE AETNA LIFE INSURANCE COMPANY
vs.
JOHN T. MOORE, Administrator.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Georgia, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the plaintiff in error, The Aetna Life Insurance Company of Hartford, Connecticut, and the surety on the writ of error bond herein, The American Bonding Company of Baltimore, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said Circuit Court.

Mch. 28, 1911.

257 I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the Court (except the transcript of the record from the Circuit Court of the United States for the Southern District of Georgia) in a certain cause in said court, numbered 2035, wherein The Aetna Life Insurance Company is plaintiff in error, and John T. Moore, Administrator, is defendant in error, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 11th day of May A. D. 1911.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

258 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Aetna Life Insurance Company is plaintiff in error, and John T. Moore, Administrator of John A. Salgue, deceased, is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Southern District of Georgia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
259 States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 26th day of October, in the year of our Lord one thousand nine hundred and eleven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

260 [Endorsed:] File No. 22,695. Supreme Court of the United States, No. 619, October Term, 1911. The Aetna Life Insurance Company vs. John T. Moore, Administrator, etc. Writ of Certiorari. U. S. Circuit Court of Appeals. Filed Nov. 6, 1911. Frank H. Mortimer, Clerk.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

In obedience to the command of the within writ, and by direction of the judges of the United States Circuit Court of Appeals for the Fifth Circuit, I, Frank H. Mortimer, Clerk of said court as a return to, and in compliance with said writ, do hereby transmit to the Honorable The Supreme Court of the United States, a true copy of the stipulation that the transcript of record on file in the office of the Clerk of the Supreme Court of the United States be taken as a return to this writ, in the cause wherein The Aetna Life Insurance Company of Hartford, Connecticut, was appellant, and John T. Moore, Administrator, was appellee, as fully and completely as the same remains of record in my office.

Given under my hand and the seal of said United States Circuit

Court of Appeals for the Fifth Circuit at the City of New Orleans, Louisiana, this 11th day of November, 1911.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit,
Per WILLIE A. FEITELBAUM, *Deputy.*

261 In the Supreme Court of the United States, October Term, 1911.

No. 619.

THE AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN.,
Petitioner,
vs.
JOHN T. MOORE, Adm'r of John A. Salgue, Respondent.

It is hereby stipulated and agreed by and between the petitioner and the respondent in the above stated case, that the certified transcript of record on file in the office of the Clerk of the Supreme Court of the United States can be taken as a return to the Writ of Certiorari issued out of said Supreme Court of the United States on the 23rd day of October, 1911, in the above entitled cause.

This Nov. 2nd, 1911.

THE AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN., *Petitioner,*
By A. L. MILLER,
M. D. JONES,
GEO. S. JONES,
Its Attorneys of Record.
JNO. T. MOORE,
Administrator of Jno. A. Salgue, Respondent,
By MINTER WIMBERLY,
JESSE HARRIS,
AKERMAN & AKERMAN,
Attorneys of Record.

The foregoing has the following indorsements to-wit: In the Supreme Court of the United States. The Aetna Life Ins. Co. of Hartford, Conn., Petitioner vs. John T. Moore, Adm'r of Jno. A. Salgue, Respondent. No. 619, October Term, 1911. Stipulation.
262 U. S. Circuit Court of Appeals. Filed Nov. 6, 1911. Frank H. Mortimer, Clerk. Miller & Jones, Macon Ga.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the above and foregoing is a full, true, perfect and complete copy of a certain stipulation filed by the parties in relation to the return upon the writ of certiorari issued by the Supreme Court of the United States

in the case of The Aetna Life Insurance Company vs. John T. Moo
Administrator, as fully as the same remains on file and of record
my office.

Witness my hand and seal of office, at New Orleans, Louisian
on this 11th day of November, A. D. 1911.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit,
Per WILLIE A. FEITELBAUM, *Deputy.*

263 [Endorsed:] File No. 22,695. Supreme Court U. S., O
tober Term, 1911. Term No. 619. The Aetna Life Insu
ance Company, Petitioner, vs. John T. Moore, Administrator, et
Writ of certiorari and return. Filed November 14, 1911.

Supreme Court of the United States, October Term, 1913.

No. 33.

THE AETNA LIFE INSURANCE COMPANY, Petitioner,
vs.
JOHN T. MOORE, Administrator of John A. Salgue, Deceased.

It is hereby stipulated and agreed by and between the petitioner and the respondent in the above stated case that the certificate hereto attached of Tomlinson F. Johnson, Clerk of the U. S. Circuit Court for the Southern District of Georgia is a part of the record in the above case of file in the office of the Clerk of the Circuit Court of Appeals, Fifth Circuit, and should be a part of the record of file in the above case in the Supreme Court of the United States.

It is hereby further stipulated and agreed that this said certificate hereto attached, being by inadvertance left out of the record in the above case in the Supreme Court, may now be made a part of the record in the Supreme Court of the United States in the above case.

It is further stipulated and agreed that this agreement shall be filed as a stipulation and addition to the record in the above case and that the certificate hereto attached shall be printed by the Clerk of the Supreme Court and added by him to the printed record already of file in said Court.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN., *Petitioner.*
A. L. MILLER,
M. D. JONES,
O. H. HALL, JR.,
Attorneys of Record.
JOHN T. MOORE,
Administrator of John A. Salgue, Deceased.
MINTER WIMBERLY,
JESSE HARRIS,
ALEXANDER AKERMAN,
Attorneys of Record.

In the Circuit Court of the United States for the Southern District of Georgia.

JOHN T. MOORE, Administrator, etc.,
vs.
THE AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN.

The undersigned does hereby certify that upon the trial of the above case there was introduced in evidence the original insurance policy No. 65192 issued by the Aetna Life Insurance Company to John Andrew Salgue, dated July 15th, 1906, for $6,000.00, and which forms a part of the original record made up in this Court

for the transmission of said case to the United States Circuit Court of Appeals for the Fifth Circuit. That said policy so introduced in evidence contained four (4) pages made up by the folding together of one single sheet of paper, containing the policy itself on the first page, the conditions on the second page, and that the third page of said paper contains a copy of Salgue's application to the Company and his answers to the Medical Examiner.

At the top of said third page are these words:

"Form No. 1. Edition of February, 1904.

Copy of Application.

If any error is found in the statements and answers of the applicant, note the same and return the policy to the home office of the company for correction."

These words form a part of the contents of page three of said policy, conditions and application, and should have been sent up to the Court of Appeals as part of the record of said cause.

Witness my hand and seal of said Court this 6th day of February, 1911.

[SEAL.] TOMLINSON F. JOHNSON,
Clerk U. S. Circuit Court for the Southern District of Georgia,
By LENOIR M. ERWIN, *Deputy Clerk.*

[Endorsed:] 33/22,695.

[Endorsed:] File No. 22,695. Supreme Court U. S., October Term, 1913. Term No. 33. The Aetna Life Insurance Co., Petitioner, vs. John T. Moore, Adm'r, etc. Stipulation of counsel and addition to record. Filed September 6, 1913.

FILED.

MAY 24 1911

JAMES H. McKENNEY

Clerk

No. [redacted]

In the Supreme Court of the United States

OCTOBER TERM, 1910.

THE ASTRA LIFE INSURANCE COMPANY OF HARTFORD, CONN.,

Petitioner,

vs.

INO. T. MOORE, ADMINISTRATOR OF JOHN A. BALDUS,

Respondent.

PETITION FOR WRIT OF CERTIORARI, AND BRIEF OF COUNSEL FOR PETITIONER.

GEO. S. JONES,
A. L. MILLER,
MALCOLM D. JONES,
CHAS. H. HALL,
Attorneys for Petitioner.

ANDERSON PRINT

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

THE AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN.
Petitioner.

vs.

JNO. T. MOORE, ADMINISTRATOR OF JOHN A. SALGUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioner, The Aetna Life Insurance Company of Hartford, Conn., a corporation duly organized and existing under the laws of the State of Connecticut, and having its principal place of business in the city of Hartford, Conn., petitions this honorable court that the writ of certiorari may be granted to it directing the United States Circuit Court of Appeals for the Fifth Circuit to certify to this Honorable Court for its review and determination, the case of your petitioner as plaintiff in error vs. John T. Moore, as administrator of John A. Salgue, deceased, defendant in error, a citizen and resident of the Western Division, Southern District of Georgia, and for reasons therefor, respectfully shows to this Honorable Court as follows:

STATEMENT OF THE CASE.

In the spring of 1905, John A. Salgue began applying for insurance on his life to the local agents of the various companies at Macon, Georgia, where he lived.

He first applied, on June 15th, to the Penn Mutual Company for a policy of $6,000.00, and was rejected by its medical examiner upon the ground that he had heart disease.

He waited about two weeks and then made the following applications:

On June 28th, to the Sun Life of Canada, for $6,000.00.

On June 13th, to the Provident Savings of New York for $5,000.00.

On July 6th, to the Prudential Life of New Jersey for $5,000.00.

On July 8th, to the Aetna Life (petitioner) for $6,000.00.

On July 13th, to the Volunteer State Life of Tennessee, for $5,000.00.

His application to the Volunteer Life was rejected by that company upon the report of its medical examiner that Salgue had heart disease. The four other companies issued to him policies for the amount applied for.

It will be observed that within less than thirty days Salgue had applied for $33,000.00 of insurance and his applications for $27,000.00 of this amount were made shortly after he had been rejected by the first company applied to.

He accepted the policies issued by the Sun Life, the Prudential and by your petitioner, amounting to $17,000.000. For some reason not shown by the record, he did not accept the Provident Savings policy.

Salgue was found dead on May 27th, 1906, in his seat on a train from Atlanta to Macon. He died within less than a year from the date of his first application.

On learning of Salgue's death and the peculiar circumstances attending it, your petitioner caused an immediate investigation to be made as to all the facts and circumstances connected with his application for insurance and his obtaining the policy for $6,000.00 from petitioner. The investigation disclosed that Salgue had obtained this insurance by practicing the grossest fraud upon petitioner. Being thoroughly convinced of the correctness of the information furnished it that the conduct of Salgue in obtaining the insurance made the policy void, your petitioner notified the respondent, John T. Moore, the administrator of Salgue, that it would not pay the said policy.

The Prudential Life Insurance Company, upon its own separate investigation, likewise notified the said administrator that it owuld not pay the policy for $5,000.00 issued by it to Salgue as hereinbefore stated.

Thereupon on May 25th, 1907, the respondent, John T. Moore, as administrator of Salgue, brought separate suits in the Circuit Court of the United States, Western Division, Southern District of Georgia, on the Common Law side of said Court, and to the October term, 1907, thereof, against your petitioner, and also against the Prudential Life Insurance Company, upon the policies issued by them respectively on the life of John A. Salgue. These suits were in the usual form.

To this suit against it by said administrator, your petitioner made in substance this defense:

That the policy made the application and the statements and answers therein a part of the insurance contract, and they were copied thereon; that the application signed by Salgue expressly warranted that his statements were full, correct and true, and that his answers to the questions in

the application should be the basis and form part of the contract between him and petitioner, and that if the same proved to be, in any respect untrue, the policy should be void.

He further averred therein that no statement or declaration made to any agent, examiner or other person and *not contained in his application*, should be taken or considered as having been made or brought to the notice or knowledge of this petitioner, or as charging it with any liability by reason thereof.

Petitioner then averred that Salgue's answers were not full, correct and true as he had expressly warranted they would be, but that they were not full, not correct, and as to the three most important and controlling questions the answers were absolutely misleading and false, and so intended to be; that if these questions had been truly answered without evasion or concealment, your petitioner would not have issued its said policy of insurance to Salgue.

That he was asked if he had heart disease, he answered "No." That the evidence in the record shows beyond question that this answer was untrue and that Salgue knew it.

Again, that he was asked whether any proposal or application to insure his life had ever been made to any company, association or agent, and for which insurance had not been granted. Salgue answered "No," when it is beyond dispute that his application to the Penn Mutual had not been granted.

That he was asked, "Has any physician expressed an unfavorable opinion upon your life with reference to life insurance," and he answered "No," while the truth was that within thirty days three physicians had expressed such opinion and under circumstances to strongly impress Salgue.

And, finally, that these various acts upon Salgue's part

operated as a breach of his warranty to your petitioner and made said policy void.

THE COURSE OF THE LITIGATION IN THE CIRCUIT COURT.

This suit was in order for trial at the May term, 1909. Preceding it on the calendar was the suit against the Prudential Company alluded to above.

When the Prudential case was called in its order, the trial judge, the Honorable Emory Speer, the District judge for the Southern District of Georgia, over the objection of this petitioner, passed an order consolidating the two cases.

Omitting the caption, which includes a statement of each case, the order is in these words:

> "It appearing to the court that the above stated cases pending in this court are of a like nature and relative to the same and similar questions and involve issues similar in their character, and that it will avoid unnecessary costs and delay to try said causes together before the same jury:
>
> "It is thereupon on consideration thereof ordered by the court that said causes be tried together before the same jury, and that the jury render separate verdicts.
>
> "In open court, May 13th, 1909.
>
> EMORY SPEER, *Judge.*

To this order exception was duly taken by petitioner and allowed by the court.

The trial then proceeded and much testimony was introduced by all three of the parties thereto. At the conclusion of the evidence your petitioner moved the court to direct the jury to find a verdict in its favor upon the ground

that the evidence was insufficient to support a verdict for the plaintiff. This motion was refused and exception was duly taken and allowed.

At the proper time your petitioner submitted to the court certain appropriate requests in writing, eleven in number, for instructions to the jury, all of which were refused by the court, and none of which even in different form, were embraced in the court's charge to the jury. To the refusal of the court to give these requests, exceptions were duly taken and allowed:

For the purposes of brevity in this petition, petitioner calls attention to only three of said requests.

I.

"I would charge you that in this State,

"Where an applicant for life insurance covenants in his application that the statements made to the medical examiner are true, and these statements are made a part of the contract of insurance, and form the basis of such contract, any variation in any of them which is material, whereby the nature or extent or character of the risk is changed, will void the policy, whether the statement was made in good faith or wilfully or fraudulently."

2.

"I charge you further that,

"Wherever an applicant for life insurance makes material representations in his application or examination, and covenants that they are true,—and the representations are made the basis of the contract of insurance, such contract is void if the representations vary from the truth in such a manner as to change

the nature, extent or character of the risk. This is true although the applicant may have made the representations in good faith, not knowing that they were untrue."
(See Record—Pages 22 and 23.)

The legal propositions contained in these two requests are taken from the case of Wood vs. Supreme Conclave, Knights of Damon, reported in 120th Georgia, 328, being a unanimous decision from the Supreme Court of Georgia.

An entirely contrary view is taken by the United States Circuit Court of Appeals for the Fifth Circuit in the case of the Fidelity Mutual Company vs. Jeffords—107 Fed. Rep. 402.

The trial judge followed the ruling of the Circuit Court of Appeals in the Jeffords case and ignored the decision of the Supreme Court of Georgia in the Wood case, which had been rendered some years subsequently to the Jeffords case.

The remaining request, which we incorporate herein, was as follows:

"I charge you that the application of John A. Salgue to the Aetna Life Insurance Company contained the following statement: 'I further agree that no statement or declaration made to any agent, examiner or any other person, *and not contained in this application*, shall be taken, or considered as having been made to, or brought to the notice or knowledge of said company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its exec-

utive officers, and that no other person can grant insurance or make any agreement binding upon said company.' This agreement is incorporated in and made a part of the policy of the Aetna Life Insurance Company sued upon. In addition to this agreement between the assured and the Insurance Company the following words appear upon the policy issued by the company to the assured: 'If any error is found in the statements and answers of the applicant, note the same and return the policy to the home office of the company for correction." By the agreement here quoted, from both the application and the policy issued to the assured, the power of the agent receiving the application and the power of the medical examiner of the Insurance Company was expressly limited and notice of such limitation was brought home to the assured by the agreement incorporated in the application which he signed, and by this same agreement being embodied and being made a part of the policy issued to him by the Aetna Life Insurance Company. The power of the agent taking the application and the power of the medical examiner of the company being limited by this agreement, no verbal statement or declaration made to any agent of the company or any examiner of the company, or any other person connected with the company, and not contained in his written application to the company, should be taken or considered as having been made to or brought to the notice or knowledge of the Aetna Life Insurance Company or as charging the said company with any liability by reason thereof."
(See Record—Pages 28 and 29.)

The pertinency of this request was that evidence had been introduced showing that Salgue stated to the medical examiner and soliciting agents of petitioner that a doctor

had told him he had heart disease. The jury should have been instructed that if this statement was not incorporated in the policy or the application it would not affect the company.

The request was based on the decision of this court in the Northern Assurance Company vs. the Building Association, 183 United States, 308. But the trial judge ignored it.

— —

The jury under the charge of the court found a verdict in favor of the plaintiff for the full amount sued for, finding separate verdicts in each case.

Thereupon the case was taken to the United States Circuit Court of Appeals for the Fifth circuit by your peitioner on a writ of error.

ACTION IN CIRCUIT COURT OF APPEALS.

The case was argued before the Court of Appeals on the 22nd day of February, 1911, the court being composed of the Honorable Don A. Pardee and David D. Shelby, Circuit Judges, and the Honorable Harry T. Toulmin, District Judge. On the 28th day of March, 1911, the said Court of Appeals handed down the following decision:

> "By the Court:
>
> "We find no reversible error in the record, and the judgment of the Circuit Court is
>
> AFFIRMED.
>
> "Pardee, Circuit Judge, does not concur."

There having been no opinion delivered either by the majority of the court or by the dissenting Circuit Judge, your petitioner did not apply for a re-hearing.

QUESTIONS OF GENERAL IMPORTANCE INVOLVED

(a)

The matter of ordering one or more cases consolidated for trial before the same jury is not only of highest interest as a point of practice in the courts, but of vital importance to litigants.

In this instance the application to the Prudential Company differed widely from that made to petitioner, both in the questions and in the answers made in each, respectively, and the evidence touching the liability of the two companies varied widely in its scope and effect. The trial court did not exercise proper discretion in ordering these two cases tried together.

(b)

Again the broad question is made in this case that insurance companies can stipulate with an applicant that no facts stated to their agents or examiners shall be taken or considered as brought to the knowledge of the companies or charging them with any liability unless such statements are written into the application. This question affects every insurance company doing business in the United States, whether foreign or domestic.

This enables the companies to protect themselves against their own agents and examiners; a protection often needed. This court has decided that such stipulations between the parties are valid. The trial judge, however, in this case, ignored this stipulation and provision in Salgue's application.

CONFLICT OF COURTS.

The conflict between the trial court and the United States Circuit Court of Appeals on the one side and the Supreme Court of Georgia on the other, as hereinbefore set forth, is a matter of great importance, not only to every insurance company, both domestic and foreign doing business in Georgia, but also to every citizen of the State holding an insurance policy.

The Supreme Court of Georgia holds that if a policyholder has secured a policy of insurance on a statement that was material and untrue that the policy is void even where the applicant did not know the statement was untrue.

The trial court and the Circuit Court of Appeals hold, upon the other hand, that although the statement be material and false, yet if made in good faith by the applicant, the policy is not void.

These opposing opinions are based on differing constructions of the Statutes of Georgia applying to insurance contracts. These will be set forth in the brief attached hereto. It is conceded that the contract of insurance in this case is a Georgia contract.

If these divergent views remain unreconciled, then a domestic company in Georgia has a protection in the State Courts which is denied to foreign insurance companies when sued in the Federal Courts.

Your petitioner has no right of appeal or writ of error herein to this honorable court, because the jurisdiction of the Circuit Court depended entirely on diverse citizenship.

Due notice of this application has been given to the attor-

neys of record for the respondent together with copies of this petition and the brief of petitioner's counsel attached hereto.

Wherefore your petitioner prays that its petition for a writ of certiorari be granted.

GEORGE S. JONES,
A. L. MILLER,
MALCOLM D. JONES,
CHAS. H. HALL,
Petitioner's Attorneys.

STATE OF GEORGIA, COUNTY OF BIBB:

A. L. Miller, being duly sworn, says that he is one of the counsel for the Aetna Life Insurance Company of Hartford, Conn., the petitioner in the above petition for certiorari. That he prepared the said petition, is personally cognizant of all the facts recited therein, and the allegations thereof are true, as he verily believes.

(Copy) A. L. MILLER.

Subscribed and sworn to before me, this 12th day of May, A. D., 1911.

CECIL MORGAN,
Deputy Clerk U. S. Circuit, So. Dist. Ga.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

We are fully mindful of the limitations imposed by this Court upon the grant of writs of certiorari to the United States Circuit Courts of Appeal of the several circuits under the Act of 1891. And in the brief argument that we submit in support of the petition in this case, we will endeavor to bring this particular application within those limitations.

1.

The Circuit Court of Appeals affirmed the ruling of the trial court in passing an order consolidating the two cases brought by Salgue's administrator against the Prudential and the Aetna companies, respectively.

This was clearly error, because the chief similarity of the cases was the identity of the plaintiff. In other respects they differed so widely as to make it unfair to try the two together.

Section 921, Revised Statutes, provides that

> "When cases of a like nature or relative to the same question are pending before a court of the United States, or of any territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice *and may consolidate said causes when it appears reasonable to do so.*"

The main authority cited in either court is the case of Mutual Life Company vs. Hillmon, 145 U. S. 285.

This is the only instance where we can find that this question has been passed upon by this court. In this case, one plaintiff sued three insurance companies, all of which interposed as the sole defense that the assured was not dead. The order of the Circuit Court consolidating the three cases was of course affirmed.

We submit, with all respect, that the only sound and fair test in deciding as to the consolidation of separate cases is whether the same jury, after having tried one of the cases separately would still be competent and qualified to try the other, by reason of its different facts.

No case involving this point of practice has yet been before this court with facts that called for a comprehensive and authoritative ruling upon this highly important question.

2.

As set out in the petition for certiorari, the trial court refused to instruct the jury that no statements made by Salgue to the Aetna's soliciting agents or medical examiner could be considered as made to the company or as charging it with any liability by reason of such statements unless the same were *actually incorporated in the application signed by Salgue.* The Aetna Company was clearly entitled to have this instruction given, because evidence was introduced showing that Salgue had stated to the Aetna's agents and examiner that a doctor had told him he had heart disease. The record also discloses that these statments were not incorporated in Salgue's application, nor were they ever brought to the notice of the company.

The Aetna's right to have these instructions given as requested is fully sustained by two cases decided by this court.

The first is New York Life Co. vs. Fletcher, 117 U. S., 519.

The other is the case of the Assurance Company vs. Building Association, 183 U. S., Pages 361, 362 and 363—which strongly affirms the Fletcher case. The simple question here is, can an insurance company compel a reduction to writing of all the material preliminary statements upon which its policy is finally to be issued, and contract that no statement shall be binding on the company unless incorporated in the application.

This question is presented clearly in the language used by the Aetna Company in its form of application in this case. An authoritative decision from this court upon the policy in this particular case is invoked, not only for the protection of this particular insurance company,, but also for the joint protection of insurers and insured throughout the United States.

When the inconceivable magnitude of the insurance business of this great country is considered, the value of a decision of this court upon the proposition here involved can hardly be measured.

3.

As matters now stand, since the decision of the Fifth Circuit Court of Apeals in this case on the 28th of March, 1911, an unfortunate conflict exists between the Supreme Court of Georgia and said Circuit Court of Appeals, touching the law governing cases of this character.

Bluntly stated the situation is this:

On March 19, 1901, the said Circuit Court of Appeals decided, in Fidelity Mutual vs. Jeffords, 107 Federal Reporter, 403, that these contracts were Georgia contracts, controlled by the Georgia Statutes, and that where an applicant for in-

surance made a statement that was material and untrue, but yet made by him in good faith, the policy did not thereby become void. In fine, if he acted in good faith, the policy did not become void. That the controlling question was one of good faith on the applicant's part.

Upon the other hand, the Supreme Court of Georgia, by the unanimous decision of a full bench, decided on June 8, 1904, in the case of Supreme Conclave vs. Wood, 120 Ga., 328, that a material and untrue statement will avoid the policy, whether the statement was made in good faith or wilfully or fraudulently.

In the body of the opinion it is stated that it is immaterial whether the applicant acted in good faith in making the representations, but that if they were material and varied from the truth so as to change the nature, extent or character of the risk, the policy would be void.

Six years after the decision in the Jeffords case, the case at bar is tried, and the trial judge follows the ruling in the Jefford's case, submitting the case to the jury as one to be determined accordingly as Salgue acted in good faith or in bad faith.

The trial judge though requested to instruct the jury in conformity with the decision of the Supreme Court of Georgia in the Wood case, declined to do so.

His charge appears in the record, 226-243.

This question, by proper assignment and specification of error, was distinctly brought before the Circuit Court of Appeals, and that court, by rendering a judgement that no reversible error was to be found in the record necessarily affirmed the ruling of the lower court. In other words, that court still adheres to the ruling made by it in the Jefford's case in 1901.

This decision, however, in the case at bar, we beg to again remind the court, was made by Circuit Judge Shelby and District Judge Toulmin, while Circuit Judge Pardee did not concur.

The Statutes of the State of Georgia which have been construed by these respective courts with such differing conclusions, are contained in the following sections of the Georgia Code of 1910:

> "§2479. Every application for insurance must be made in the utmost good faith, and the representations contained in such application are considered as covenanted to be true by the applicant. Any variation by which the nature, or extent, or character of the risk is changed, will void the policy."
>
> "§2480. Any verbal or written representations of facts by the assured to induce the acceptance of the risk, if material, must be true, or the policy is void. If, however, the party has no knowledge, but stated on the representation of others, bona fide, and so informs the insurer, the falsity of the information does not void the policy."
>
> "§2481. A failure to state a material fact, if not done fraudulently, does not void; but the wilful concealment of such a fact, which would enhance the risk, will void the policy."
>
> "§2483. Wilful misrepresentation by the assured, or his agent, as to the interest of the assured, or as to other insurance, or as to any other material inquiry made, will void the policy."

Under the present situation it is apparent that the rights and remedies of Georgia insurance companies and of their

policyholders are different from those of other states or foreign countries and their policyholders.

Clearly this state of affairs is to be deplored and should be remedied.

Respectfully submitted,

GEORGE S. JONES,
A. L. MILLER,
MALCOLM D. JONES,
CHARLES H. HALL,
Petitioner's Attorneys.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1910.

The Aetna Life Insurance Company, of Hartford, Conn.
vs.
John T. Moore, Administrator, Etc.

Petition for Certiorari.

We have received from the counsel for petitioners in the above case due notice of the time and place of the hearing of said petition and also copies of the said petition and of the brief of petitioners' counsel in support thereof.

This, May 13, 1911.

MINTER WIMBERLY,
JESSE HARRIS,
ALEXANDER AKERMAN,
CHARLES AKERMAN,
Respondent's Attorneys.

Office Supreme Court, U. S.
FILED
MAR 29 1941
JAMES R. BROWNING
Clerk

In the Supreme Court of the United States

October Term, 1940

THE ATLAS LIFE INSURANCE COMPANY OF TULSA, OKLA., PETITIONER

v.

JOHN T. MOORE, ADMINISTRATOR, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION

HUTTER, WIMBERLY, HARRIS, ALEXANDER AKERMAN, CHARLES AKERMAN,
Attorneys for Respondent.

In the Supreme Court of the United States

OCTOBER TERM, 1910

THE AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN., PETITIONER

vs.

JOHN T. MOORE, ADMINISTRATOR, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION.

This court is asked by the petition to review a decision by the Circuit Court of Appeals for the Fifth Circuit affirming a verdict and judgment recovered by the respondent against the petitioner in the United States Circuit Court for the Western Division of the Southern District of Georgia, upon a policy of life insurance.

The grounds upon which the petitioner prays for the writ of certiorari may be grouped into three as follows:

1st. Because the circuit court erred in order-

ing the case of the same plaintiff against the Prudential Life Insurance Company tried together with the case against the petitioner.

2nd. Because the circuit court erred in refusing to charge as requested by petitioner in reference to statements made by the insured to the agent and examiner of the Company and not incorporated in the application.

3rd. Because the circuit court erred in refusing certain requests to charge which in effect amounted to the direction of a verdict for the defendant, and in refusing to direct a verdict for the defendant.

We will first call the attention of the court to the general rule laid down by this court for the grant of writs of certiorari and then discuss the three grounds upon which the writ is applied for.

> "It is evident that it is solely questions of gravity and importance that the Circuit Court of Appeals should certify to us for instruction; and that it is only when such questions are involved that the power of this court to require a case in which the judgment and decree of the Court of Appeals is made final, to be certified, can be properly invoked.
>
> Exparte Lau Ow Bew 141 U. S. 583.
> Exparte Woods 143 U. S. 202.

I.

Section 921 of the Revised Statutes gives the court full power to consolidate causes where the same questions are involved, and the only way in which the Circuit Court, the Court of Appeals, or this Court can determine this question is by an inspection and comparison of the pleadings. The trial court could not look into the future and see that the several defendants would offer different testimony. Therefore, we respectfully submit that the pleadings in the Aetna case only being before this court that it can not properly review a question of abuse of discretion by the trial court.

> "Under Rev. Stat. Sec. 921 a court of the United States may order actions against the insurers of the same life, in which the defense is the same, to be consolidated for trial against their objection."

Mutual Life Ins. Co. vs. Hillmon, 145 U. S. 285.

II.

In the brief of the petitioner it is claimed that the circuit court refused to give certain instructions to the jury in the face of two decisions of this Court, which sustain the right of the peti-

tioner to have such instructions given. If this contention be true, which is by no means conceded, it was mere error by the trial court and would be no ground for the grant of the writ of certiorari.

Ex Parte Lau Ow Bew and other cases cited supra.

The evidence in regard to the statements made by the insured to the agent and medical examiner was admitted solely for the purpose of illustrating the good faith of the insured and was carefully limited to such purpose by the trial judge in his charge.

Record page 231.

III.

We think that the conflict between the Supreme Court of Georgia in the Wood case (120 Ga. 328) and the Circuit Court of Appeals in the Jeffords case (107 Fed. 402) is more fanciful than real as both cases at last leave the issues to be determined by the jury. But if there is a conflict between the State and the United States Courts on questions of insurance, we contend, that life insurance being a question of general commercial law, the United States Courts are

not bound by the decisions of the State Courts, but should decide such cases upon their own independent judgment.

Carpenter vs. Ins. Co., 16 Peters, 495
Swift vs. Tyson, 16 Peters, 1.
Watson vs. Tarpley, 18 Howard 517.
N. Y. C. R. R. vs. Lockwood, 17 Wall, 357.
Pine Grove Township vs. Talcott, 19 Wall, 666.
Oates vs. First National Bank, 10 Otto, 239.
Mutual Life Ins. Co. vs. Lane, 151 Fed. 276.

(The last case above was affirmed by the Circuit Court of Appeals, 157 Fed. 1002, and Certiorari denied by the Supreme Court, 208 U. S. 617.)

We respectfully submit that the Circuit Court of Appeals should not be required to reverse its independent judgment rendered in the Jeffords case (107 Fed. 402) in which case it followed the decision of this court in Moulor vs. Insurance Co., (III U. S. 335) and follow a subsequent decision of the Supreme Court of Georgia on a question of general commercial law.

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No. 33 [illegible]

No. [illegible]

Office Supreme Court, U.S.
FILED.
OCT 1 1913
[illegible] McKENNEY
Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

AETNA LIFE INSURANCE COMPANY,
Petitioner,

vs.

JOHN L. MOORE, Administrator of John A. Moore, Deceased,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF AND ARGUMENT FOR PETITIONER

A. J. MILLER,
M. D. JONES,
[illegible] JONES,
WALTER DEPORRE,
WALLACE MILLER,
CHAS. H. HALL, JR.,
Of Counsel for Petitioner.

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American Insurance Co. *vs.* Newberger, 74 Mo., 173.

Assurance Co. *vs.* Building Association, 183 U. S., 308 (358-9-360-1-2-3).

Assurance Society *vs.* Clements, 140 U. S., 226.

Carrollton Co. vs. American Co., 124 Fed. Rep., 26 (30-31).

Continental Insurance Co. *vs.* Chamberlaine, 132 U. S., 304.

Denver City Tramway Co. *vs.* Lawton, 141 Fed. Rep., 599.

Equitable Assurance Co. *vs.* McElroy, 83 Fed. Rep., 361 631 (636).

Farrell *vs.* Insurance Co., 125 Fed. Rep., 684.

Fidelity Ins. Co. *vs.* Jeffords, 107 Fed. Rep., 402 (403-8-9).

Georgia Statutes, Code Sections 2479-2480-2481-2483-2499.

Goddard *vs.* Monitor Co., 108 Mass., 57.

Georgia Home Ins. Co. *vs.* Rosenfield, 95 Fed. Rep., 362 (363-4-5-6).

Jefferies *vs.* Insurance Co., 22 Wall, 47.

McCue *vs.* Insurance Co., 223 U. S., 234.

Moulor *vs.* Insurance Co., 111 U. S., 335 (341 top-345 foot).

Mutual Insurance Co. *vs.* Hollman, 141 U. S., 285.

North Western Ins. Co. *vs.* Montgomery, 116 Ga., 799 (809 bottom).

New York Life Ins. Co. *vs.* Fletcher, 117 U. S., 519 (520-29-30-34).

Penman *vs.* Insurance Co., 216 U. S., 311 (321).

Phoenix Insurance Co. *vs.* Raddin, 120 U. S., 183 (189-90).

Security Mutual Co. *vs.* Webb, 106 Fed. Rep., 808 (810-12-13-14).

Slocumb *vs.* Insurance Co., 228 U. S., 374.

Supreme Conclave *vs.* Wood, 120 Georgia, 328 (329-36-37).

Swann *vs.* Watertown, 96 Pa. St., 43.

Teal *vs.* Bilby, 123 U. S., 572 (573).

United States Revised Statutes, Section 921.

Wabash R. R. Co. *vs.* Central Trust Co., 23 Fed. Rep., 515.

Webb *vs.* Insurance Co., 126 Fed. Rep., 635.

Weide *vs.* Insurance Co., Fed. Cases No. 17617.

THE AETNA LIFE INSURANCE COMPANY,
Petitioner.
vs.
JOHN T. MOORE,
Administrator of John Andrew Salgue, Deceased.
Respondent.

No. 304.
October Term, 1912.
Supreme Court of the United States.

Brief and Argument of A. L. Miller, M. D. Jones, Walter Defore, C. H. Hall, Jr., Geo. S. Jones and Wallace Miller, of Counsel for Petitioner.

STATEMENT OF THE CASE.

This action was brought in the Circuit Court of the United States for the Western Division of the Southern District of Georgia, and was based upon a policy of life insurance issued by The Aetna Life Insurance Company, upon the life of one John A. Salgue, a resident of the State of Georgia, for the amount of $6,000.00.

The case was tried before the Honorable Emory Speer, District Judge for the Southern District of Georgia, and a jury in that court, and resulted in a verdict and judgment in favor of John T. Moore, Administrator, the respondent herein, as against the Aetna Life Insurance Company, the petitioner herein.

The defenses filed to this action in the trial court, were as follows:

The answer of the Defendant Company averred that the policy recited that it was issued in consideration of the statements, answers and warranties contained in Salgue's application, which was copied on the policy and made a part of the contract for insurance; also that Salgue declared in

his application to the Aetna and expressly warranted that he was in good health on that date, July 8, 1905; was of sound mind and body, and that the statements contained in his application and signed by him were full, correct and true; that he had no knowledge or information of any disease, infirmity or circumstance, not stated in his application which might render insurance on his life more hazardous than if such disease, infirmity or circumstance had never existed.

He further agreed that the declarations and warranties made in his application and the answers to the questions therein, together with those to the medical examiner should be the basis and form part of the contract (or policy) between himself and the Aetna Company, and if the same were in any respect untrue, the policy should be void;

And he further agreed that no statement or declaration made to any agent, examiner or any other person and not contained in his application should be taken or considered as having been made to or brought to the notice or knowledge of the Aetna Company, or as charging it with any liability by reaeson thereof.

The defendant further averred in its answer that Salgue committed various breaches of the warranty entered into by him in said contract of insurance contained in the policy and application, all or any one of which breaches of said warranty had made the said policy of insurance void and of no effect between the parties.

It averred that Salgue declared and warranted in his application that he was in good health, when, in fact, he had heart disease, of which he had been informed by several physicians and from which he died within a year.

The defendant again averred that Salgue, when asked for the names and residences of all physicians personally employed or consulted by him during the five years preceding the date of his application, gave the name of only one, when, as a matter of fact, he had employed or consulted several physicians within less than twenty days previous to

making his application, and some of whom had told him plainly and without reserve he had heart disease.

The defendant further averred that in reply to a question whether any proposal or application to insure his life had ever been made by him to any company, association or agent, which had not been granted, Salgue answered, "None," whereas, in point of fact, Salgue had applied to a company just twenty-three days prior to making this answer and his application had not only not been granted, but he had been told by the examining physician he had heart disease, and was advised to go at once to his personal physician who himself immediately examined Salgue, and also informed him he had heart disease, and treated him for it.

Defendant again sets up in its answer that Salgue, in answering the question of the Aetna Medical Examiner, as to whether he had heart disease, replied "No"; when in fact, as just recited, he did have heart disease and finally died of it.

The defendant further alleged that Salgue was asked this question, "Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? If so, state particulars," and he answered "No," whereas, in point of fact, a medical examiner had within twenty-three days prior to this date examined Salgue for life insurance, and not only expressed an unfavorable opinion upon his life with reference to being insured, but informed him he had heart disease, and sent him to his personal physician for treatment.

The defendant finally pleaded that these various answers made by Salgue to the questions in his application were not full, correct and true, as required by his express warranty that they should be, but were in fact untrue and were in effect a wilful concealment of material facts which enhanced the risk of the defendant and thereby made the policy void. That the defendant acted solely upon the statements of Salgue, warranted by him to be true, and, inasmuch as the evidence discloses that the said statements were false,

they necessarily operated as a fraud in law upon the defendant and made the said policy void and of no effect.

Upon the call of the case in the Circuit Court, for trial, the District Judge presiding ordered this cause consolidated for trial with the cause of John T. Moore, Administrator of John A. Salgue, deceased, versus the Prudential Insurance Company of America, a cause pending in that court brought by the same plaintiff against the Prudential Insurance Company of America, upon a policy of insurance issued by that Company to John A. Salgue. To this order of consolidation of these two causes for trial petitioner objected, and filed its exceptions, and its exceptions to this order were duly allowed by the Court.

At the conclusion of the evidence in the case, petitioner moved the Court for the direction of a verdict in its favor. This motion was denied, and to this denial the petitioner filed its exception, which was duly allowed by the Court.

Prior to the charge of the Court, petitioner requested the Court in writing to give to the jury certain charges upon the various defenses raised by defendant's answer, and which will be found fully set forth in *totidem verbis* in this brief.

These requested charges were refused by the Court and to the Court's refusal to give said requested charges, petitioner filed its exceptions and its exceptions were allowed.

The result of the trial was a verdict and judgment against petitioner, The Aetna Life Insurance Company, in favor of John T. Moore, Administrator of John A. Salgue, respondent.

From the judgment so recovered, a writ of error was taken by your petitioner to the Circuit Court of Appeals for the Fifth Judicial Circuit. The grounds upon which a reversal of the judgment was sought were based on the following alleged errors committed at the trial:

First, The order of the trial court ordering consolidated for trial this cause with the cause of John T. Moore, Administrator of Salgue, versus the Prudential Life Insurance Company of America.

Second, The refusal of the Court to direct a verdict for the defendant.

Third, The refusal of the Court to charge the jury as requested

The judgment of the Circuit Court was affirmed without opinion by a majority of the Circuit Court of Appeals for the Fifth Judicial Circuit, Circuit Judge Pardee dissenting.

Petitioner then filed to this Honorable Court a petition for grant of a writ of certiorari, and this petition was granted, and the cause by certiorari, brought to this Honorable Court for its review.

In June, 1905, John A. Salgue, forty-two years of age, strong, robust and apparently in vigorous health, began applying for insurance on his life, payable to his estate. He was superintendent of the Bibb Brick Company, of Macon, Georgia, and earning a large salary, amounting to five thousand dollars, and sometimes more, per annum.

About June 15th, he, without solicitation, applied to the local agent of the Penn Mutual Insurance Company at Macon, for a policy of six thousand ($6,000.00) dollars. The Company's Medical Examiner, Dr. W. J. Little, refused to pass Salgue, telling him he had heart disease, and advising him to see his family physician, Dr. J. C. McAfee. Salgue, upon being told he had heart disease, went immediately to see his family physician and was by him, then and there, informed that he had heart disease. Dr. Little, the Medical Examiner of the Penn Mutual Insurance Company, after refusing to pass Salgue, returned the application papers to Mr. Clarke, the local agent of the Penn Mutual Insurance Company, stating he declined to pass Salgue, because he had heart disease. The local agent did not

forward the papers to the home office, and testified that he did not know what became of them.

Clarke required Salgue, however, to pay the examiner the usual fee of five ($5.00) dollars, for the examination, which Salgue did.

On June 28, 1905, Salgue applied to the Sun Life of Canada for a policy of $6,000.00 He was examined and passed by the Company's Medical Examiner, Dr. R. B. Barron, and the policy was duly issued to and accepted by Salgue.

On June 30, 1905, Slague applied to the Provident Savings Life Company, of New York, for a policy of $5,000.00, was duly examined and passed by the same examiner, Dr. R. B. Barron. Salgue for some reason not shown by the record, did not accept this policy.

On July 6, 1905, he applied to the Prudential Life Insurance Company for a policy of $5,000.00. He was examined and passed by the Company's examiner, Dr. W. R. Winchester, and the policy was duly issued and accepted.

On July 8, 1905, Salgue applied to the Aetna Life Insurance Company, the petitioner, for a policy of $6,000.00. He was duly examined and passed by Dr. C. C. Harrold, the Company's examiner, and the policy issued to and was accepted by him.

Again on July 13, 1905, Salgue applied to the Volunteer State Life Insurance Society for a policy of $5,000.00. He was duly examined by Dr. Henry McHatton, the Company's examiner, who reported in writing to the home office that Salgue had heart disease and thereupon his application was rejected.

Thus it will be seen that within a period of less than thirty days Salgue had applied for insurance to the amount of $33,000.00.

It will be noted that the application to the Aetna Company was in point of time the next to the last application made by Salgue to the various companies named above; it being made on July 8, 1905.

Salgue was found dead on May 27, 1906, in his seat on the passenger train from Atlanta to Macon, dying within

less than one year from date of his first application—that to the Penn Mutual on June 15, 1905.

Death proofs were duly made on his policy in the Aetna, and on refusal of payment of the policy by the Company, a suit was brought as herein stated.

SPECIFICATIONS OF ERROR RELIED UPON.

First: The order of the Court consolidating for trial this cause with the cause of John T. Moore, Administrator of John A. Salgue *v.* The Prudential Insurance Company of America.

Second: The refusal of the Trial Court to direct a verdict in favor of your petitioner, which was the defendant in the Trial Court.

Third: The refusal of the Court to charge the jury as requested by your petitioner, which was the defendant in the Trial Court.

BRIEF AND ARGUMENT

I.

THE TRIAL COURT COMMITTED ERROR IN ORDERING CONSOLIDATED FOR TRIAL THIS CAUSE WITH A CAUSE BROUGHT BY THE SAME PLAINTIFF AGAINST THE PRUDENTIAL INSURANCE COMPANY ON ITS POLICY OF INSURANCE ALSO ISSUED UPON THE LIFE OF THE INSURED, JOHN A. SLAGUE.

This order of consolidation was as follows:

"John T. Moore, Administrator of the Estate of John Andrew Salgue, Deceased, *vs.* The Prudential Insurance Company of America,	Action on Insurance Policy."
"John T. Moore, Administrator of the Estate of John A. Salgue, Deceased, *vs.* The Aetna Life Insurance Company of Hartford, Conn.	Action on Insurance Policy."

"It appearing to the Court that the above stated causes pending in this Court are of a like nature and relative to the same and similar questions, and involving issues similar in their character, and that it will void unnecessary costs and delay to try said causes together before the same jury,

"It is, upon consideration thereof, ordered by the Court

that said causes be tried together before the same jury, and that the jury render separate verdicts.

"In open Court, May 13th, 1909.

"(Signed) EMORY SPEER, Judge."

(See Record, p. 10.)

Section 921 of the Revised Statutes provides that "When causes of a like nature, or relative to the same questions, are pending before a Court of the United States, or of any territory, the Court may make such orders and rules concerning proceedings therein as may be conformable to the usages of Courts for the purpose of avoiding unnecessary costs or delay in the administration of justice, *and may consolidate said causes when it appears reasonable to do so.*"

The order of consolidation by the trial judge was based upon the opinion of the Court that the two cases "are of a like nature and involve issues similar in their character, and that it will avoid unnecessary costs and delay to try said cases before the same jury." In this opinion and conclusion the Trial Court was in error for the following reasons:

(1) The respective cases were based on two entirely different contracts for insurance. (pp. 29 and 36 of the Record.) The contracts were based on applications essentially dissimilar, as will appear from an investigation of the two policies together with applications attached to said policies and being a part thereof.

Our contention is that Revised Statutes 921 does not confer upon the Court an arbitrary and unlimited power, but one which may only be exercised under the conditions prescribed in that statute and where such exercise is reasonable.

(2) The two causes involved separate and distinct defenses—as clearly appears from an inspection of the pleadings and the evidence.

In the case of Teal *v.* Bilby, 123 U. S., 572, there were two separate actions brought by the same plaintiff against the same defendant. The first was an action of replevin under which the plaintiff got possession of certain cattle, and the second was an action to recover damages for a failure on the part of the defendant to fulfill a contract of adjistment with regard to the same cattle. The Supreme Court in this case, on page 573, lays down the rule as follows: "As the rights of the parties depended upon the same contract, and as the testimony in each case was pertinent in the other, the Court very properly ordered their consolidation." This we contend is the rule by which the consolidation of the two cases at bar must be measured. If it falls short of this rule the Trial Court erred in ordering the consolidation. As before suggested, the rights of the parties here depended upon two separate and distinct contracts, and the testimony in each case would not have been pertinent in the other if tried separately.

We further submit the only safe and fair test in determining whether separate cases should be consolidated, is whether the same jury that, without consolidation, had tried one of them, would be competent to try the other. Applying this rule to the two cases of the Aetna and the Prudential, it will appear from an examination of the pleadings, that the same jury could have tried the case against the Prudential without being disqualified from trying the case against the Aetna, by reason of the fact of the difference in the contracts and the difference in the evidence. The two cases are so distinct that the same jury finding a verdict for the plaintiff in one case might still find a verdict for the defendant in the other case.

Clearly, therefore, where the Statute authorizes the consolidation only "when it appears reasonable to do so," these cases should not have been consolidated.

In the following cases Section 921 of the Revised Statutes has been under consideration:

Wabash Railroad Company *v.* Central Trust Company, 23 Fed. Rep. 515;

Weide *v.* Insurance Company of North America, Federal Cases, No. 17617;

Denver City Tramway Co. *v.* Lawton, *et al.*, 141 Fed. 599;

Mutual Life Insurance Co. *v.* Hollman, 145 U. S., 285.

An investigation of the cases cited here will show that consolidation was approved upon the ground that the interests involved, the questions to be determined, the parties to the controversy, or the evidence to be submitted in relation thereto would be the same in both cases. Our understanding of the Statute is that the authority of the trial judge is limited to those classes of cases, and if we are correct and the power is so limited, then its exercise in the present case was unwarranted, and the order of consolidation should be reversed.

II.

THE TRIAL COURT COMMITTED ERROR IN REFUSING TO DIRECT A VERDICT FOR THIS PETITIONER, THE AETNA LIFE INSURANCE CO., THE DEFENDANT IN THE TRIAL COURT.

Under this head we think it well to here discuss the facts of the case as briefly and concisely as the lengthy record before the Court will permit.

DISCUSSION OF FACTS.

In this discussion we shall endeavor to apply to Salgue's conduct in this case the simple test laid down by Mr. Justice Harlan in the Moulor case, in the following words:

"Looking at all the clauses of the application, in connection with the policy, it is reasonably clear—certainly the contrary cannot be confidently asserted—that what the company required of the applicant, as a condition precedent to any binding contract, was that he would observe the utmost good faith towards it, and make full, direct and honest answers to all questions, without evasion or fraud, and without suppression, misrepresentation, or concealment of facts with which the company ought to be made acquainted, and that by so doing, and only by so doing, would he be deemed to have made 'fair and true answers.'"

Moular *vs.* Ins. Co. 111 U. S. 345 (foot).

This test is quoted with approval by Judge Shelby in the Jeffords case. 107 Fed. 403.

Now, did Salgue's conduct in this case come up to the test laid down by Justice Harlan? Did he make full, direct and honest answers to all questions without evasion or fraud? Did he suppress, misrepresent or conceal facts with which the Aetna Company ought to have been made acquainted? Were the answers made by him to the questions in his application to the Aetna full, correct and true? Did he have no knowledge or information of any disease, infirmity or circumstance not stated in his application which might render insurance on his life more hazardous than if such disease, infirmity or circumstance had never existed?

Let it be borne in mind that Salgue in June, 1905, was the picture of health. Witnesses for both sides agree that he was a magnificent looking man physically, and his employers bear witness to his remarkable strength and vigor in discharging his duties at the brick yard, of which he was superintendent. He naturally impressed both medical men and laymen as having the appearance of a man in perfect health. This doubtless largely accounts for the fact that he secured recommendtions from three of the doctors who examined him for insurance. The testimony, however, from a number of the medical examiners shows beyond all question that this appearance of vigorous health is at the

same time entirely compatible with the existence of heart disease, in a fatal form of that malady.

Now, let us trace Salgue's conduct from June 15, 1905, to July 13, 1905, inclusive, during which period he made six separate applications for insurance in large amounts upon his life. It is also proper to note here that the application to the Penn Mutual was made to the agent by Salgue at his own instance; that agents for the Aetna and the agent for the Prudential were sent to Salgue by Mr. John T. Moore, his employer, who stated to the agents that Salgue desired insurance.

PENN MUTUAL.

We take up first in order of time Salgue's application to the Penn Mutual for $6,000.00, made on or about June 15, 1905. This application, which, according to the record, has probably been lost or destroyed, was made out by Clarke, the agent, and turned over to the company's medical examiner, Dr. Little (Record 57). The contents of the application with its questions and answers, for the reason just stated, could not be placed in evidence. Dr. Little, however, testified that he as medical examiner for the Penn Mutual examined Slague thoroughly upon his application for insurance in that company and told him he had heart disease, and that he could not pass him. That he then asked Salgue who his doctor was and on his naming Dr. McAfee, advised him to see McAfee at once. Later Little told Clarke that he could not pass Salgue and upon Clarke's insisting on a re-examination, Little told him he would do so, but that it was of no use. (Rec. 61.) He further testified that he told Salgue he could not pass him because his heart was affected; that he did not pass him for insurance on that account. When he satisfied himself of the condition of Salgue's heart, he stopped the examination at that point. (Rec. 63.)

It further appears from Little's testimony that Clarke withdrew the unfinished examination papers from Little (Rec. 62), and from Clarke's testimony on page 57, it appears that he told Salgue that he did not think he could get

a policy in the Penn Mutual, and that he, Clarke, would hold Salgue's examination up and make no record of it, and if Salgue would pay the doctor's fee he could answer in the future that he had never been rejected by the company. Whereupon Salgue gave Clarke $5.00, which he paid to Dr. Little.

Acting on Little's information and advice, Salgue went at once to Dr. McAfee's office, stating he had just been told by Dr. Little he had trouble with his heart and that Little told him to come and see him about it, and he was there for the purpose of finding out whether or not it was true. McAfee then and there examined Salgue and declares that he found he had organic heart disease, a disease of a valve of his heart. That he discovered a mitral murmur. McAfee further stated that he had been treating Salgue continuously for chronic gastritis from January 5th, on various dates, up to June 15, 1905, and also had treated him on July 1st, 3rd and 15th; that he treated Salgue for heart disease. (Rec. 64.)

Dr. McAfee further stated that when Salgue came from Little's office to his he immediately examined Salgue's heart and that he told him his heart was wrong and told him what the trouble was, telling him his trouble was a disease of the mirtal valve, and gave him directions what he ought to do, and what he ought not to do. He also named the medicine which he prescribed for Salgue's heart trouble. (Rec. 70.)

Salgue was not satisfied with the opinions of Drs. Little and McAfee, and on probably the very next day after their examination consulted Dr. Jas. T. Ross, who had treated him in the latter part of 1904, or early in 1905, for a bilous attack, accompanied by a severe chill followed with fever. Ross says Salgue told him he had been examined for life insurance and the doctor would not pass him because he had a heart trouble, and he wanted Ross to listen to his heart and tell him whether he, Ross, thought, after listening to it, that Ross himself would be willing to examine him with others and give him a testimonial as to the fact that his heart was all right, and that he would be entitled to life

insurance. Ross says he then examined him and without stripping him, could, without any trouble, detect he had heart trouble. That in his opinion it was a mitral regurgitant murmur; that he told Salgue, while he was sorry to have to say it to him, in his opinion the doctor had acted correctly in saying he would not pass him for life insurance. He said Salgue named Little and McAfee as the doctors who had examined him, and Ross is able to fix the time when Salgue called upon him because he says that Salgue referred to the fact that these men had just said he was not a fit subject for life insurance. He, however, made no record of the date and he charged Salgue nothing for the examination. (Rec. 70 and 71.) Ross closed his testimony by saying that he thought any doctor who examined Salgue's heart could have discovered the symptoms that he, Ross, found. That he thought any ordinary examination would have disclosed it at the time when he examined Salgue.

It may be well to note here that neither Dr. McAfee nor Dr. Ross were medical examiners for any of the companies to whom Salgue applied for insurance.

THE SUN LIFE.

Thirteen days after the failure of his application to the Penn Mutual Salgue applied to the Sun Life Insurance Company of Canada for $5,000.00. Clarke, the Penn Mutual agent, introducing him to the Sun Life representative. (Rec. 57.) He stated in answering question 15 that no company had ever declined to assure his life.

Question 16 was, "Has any physician ever given an unfavorable opinion regarding your life? Give details." To this he answered "No."

Question 17 was, "Has any application been made by you to any company or agent and afterwards withdrawn or not yet completed? Give details." To this he likewise replied "No." (Rec. 89.)

The opening lines of his warranty following immediately after the questions and answers just recited are as follows:

"I warrant that the above answers are full and true, and that I am now and usually in sound health, and agree that this declaration with the answers to be given by me to the medical examiner shall be the basis of the policy," etc. (Rec. 90.)

In answering the questions of Dr. Barron, the company's examiner, he stated, replying to question 7, that he was then in perfect health. (Rec. 91.)

Question 10 was, "Have you ever suffered from any complaint or affection of the heart or blood vessels (palpitation included)?" Salgue answered "No." (Rec. 92.)

Finally he was asked, (Question 18, Record 93), "Are you aware of any circumstances not disclosed above which might have an unfavorable bearing upon the desirability of the risk?" To this he answered "No."

Dr. Barron, the medical examiner, testified that he made a thorough examination of Salgue for insurance in the Sun Life and found nothing detrimental to his receiving insurance and recommended him. This was June 29, 1905.

He also examined Salgue upon his application to the Provident Savings Company on July 1, 1905. His testimony covered both his examinations.

While Dr. Barron does not postively join issue with Dr. Little as to Salgue having heart disease, says he did not discover its existence upon the two examinations he made of Salgue, and thinks he would have discovered it if there had been present any organic disease of the heart. He states, on page 142, that he remembers distinctly that day in 1905, that he thought Salgue was the finest specimen of physical manhood, or as fine, as he ever had seen.

Salgue had clay on his shoes, his sleeves rolled up above the elbows and was well developed physically in every way so far as Barron could see. That there was nothing to evidence the existence of any disease.

This physical appearance of Salgue at the time of his examination by Dr. Barron no doubt made a strong impres-

sion upon the examiner and aided Salgue in securing a favorable report. Barron says himself that the beginning of heart trouble can rarely be recognized by the patient and further that a mitral murmur of the heart may be more apparent at one time than another. That he himself had heard them. He declared also that the natural progress of heart affection starting with a mitral murmur is ultimately to the destrurction of the person that has it. (Record, 144.)

This application to the Sun Life was afterwards approved at the home office, the policy issued and accepted by Salgue.

THE PROVIDENT.

Salgue's next application was made to the Provident Savings Life for $5,000.00 on June 30, 1905, just one day after he had been favorably recommended by Dr. Barron in his application to the Sun Life. He was examined and favorably reported by Dr. Barron, who was the medical examiner for the Provident Company, and whose testimony covering both the examinations has already been quoted above. His application was approved at the home office and the policy issued and sent to Macon to the local agent, but Salgue, for some reason, not appearing in the record, and as already stated, refused to accept this policy.

The material bearing that this transaction with the Provident has upon our case is that he was asked, "Are you negotiating for life insurance? If so, state in what organization and for what amount. To this question he answered "No." (Record 99 bottom.)

In his examination by the medical examiner, he was asked this: "Is your present and usual health in any way impaired?" He answered "No." (Record 102.)

He was also asked in question five on page 102, if he had disease of the heart, and he likewise answered "No."

Again on page 104 bottom, he was asked, "Has any life insurance organization ever postponed, rejected or limited as to amount, form or premium your application for assurance or restoration of lapsed policy? (Full particulars required.)" He answered "No."

THE PRUDENTIAL.

Next in order is Salgue's application to the Prudential for $5,000.00 made on July 6, 1905. The company's examiner was Dr. W. R. Winchester, who examined Salgue and on his favorable report to the home office, a policy was issued for the amount applied for and duly accepted.

In his application on page 113, he was asked (q. 4 b.), "Has any company or Association ever declined to grant insurance on your life or issued you a policy of a different kind or for a sum less than that applied for? Answer yes or no." Salgue answered "No."

Again, on page 115, in his medical examination (q. 13), he was asked this question: "Has your application for insurance ever been rejected, postponed or modified by an insurance company, assessment society or benevolent order?" He answered "No."

Winchester, the company's doctor, testifies, on page 52, that when he examined Salgue he did not know that Salgue had been examined by Dr. Little for the Penn Mutual, nor that he had been treated by Dr. McAfee for heart trouble. That Salgue did not inform him about any of those matters; mentioned nothing except that little bilious attack he said he had some time prior, and which circumstance Winchester includes in his report. He also says, on page 52 (bottom), that a mitral murmur is sometimes very hard to find and he would not have approved Salgue for insurance if he had known he had a mitral murmur of the heart. That he examined him very carefully, and didn't find anything indicating mitral murmur.

Further on, page 53, Winchester says the existence of a mitral murmur does not affect a man's countenance in any way in the earliest stages, and does not affect a man's physical vigor until the later stages.

Again, on page 55, he says Salgue did not tell him when he came to be examined for the Prudential policy that another doctor had told him something was the matter with

his heart or that he had heart trouble. Nothing of the sort was said, and on the next page he said it was very possible he could examine the same man, say at an interval of two months, and at one time the heart trouble would escape him and at another it would not. It is owing to circumstances and a man's condition at the time. He says also, Salgue appeared to be in perfect health and was a very vigorous man—erect and muscular, having every appaerance of a man in perfect health, and would be regarded as a first-class risk. (Record, page 56.)

Replying to the last question of the cross-examination by plaintiff's counsel, he said "No, sir, if a man should die of heart disease within some ten months after he was examined by me for this mitral murmur, his symptoms would not necessarily have been such that I would not have accepted him; sometimes they are very rapid in progress and sometimes very slow. Generally speaking, they last a good deal longer than that." And then, in answer to a question from the counsel for the Aetna, he says, "Yes, sir, this man had the appearance of being a vigorous, robust, healthy man. Yes, sir, that is entirely consistent with the same man having heart disease in its first stage."

We again beg to suggest that this remarkably fine physical appearance of the applicant must undoubtedly have had its effect upon Dr. Winchester in reaching the conclusion that he could safely pass him for insurance.

THE AETNA.

Within two days after making his application to the Prudential, Salgue then applied to the Aetna on July 8, 1905, for a policy on his life for $6,000.00. The Company's agents were B. H. Ray and W. E. Hawkins, both of whom testified on the trial.

Ray stated that on July 7th, Mr. John T. Moore, the plaintiff in this case and Salgue's employer, suggested to him to come out to his brick plant, and he would introduce Ray to Salgue, the superintendent, who was figuring

on some insurance. That on the morning of the next day, he, with Hawkins, the Aetna's General Manager in Georgia, went out to the brick yard and saw Salgue. After talking over the matter that he, Ray, read out each question in the application which appears in the record and wrote down Salgue's answers as he gave them. (Record, 120.)

Ray further stated Salgue remarked that someone had said he had heart trouble and Hawkins replied that was a matter for the physician to pass upon. He, Ray, had written the application at that time and had telephoned for Dr. Barron. Not being able to reach him, he then telephoned for Dr. Harrold. That he did not know until that morning that Harrold was an examiner for the company. Salgue did not name the person who told him he had heart disease. (Record, 122.)

Hawkins testified that he was present on July 8th when Ray filled out the application for Salgue; that the interview took place about 10 o'clock, and they were there about an hour before Dr. Harrold arrived. (Record, 125.)

Hawkins further states that Salgue did not say who the doctor was that had told him he had heart trouble; that he thinks both he and Ray called Harrold's attention to the fact that Salgue said a doctor had told him he had heart trouble. This was before Harrold took Salgue into the adjoining room of the brick company's office to examine him. When Harrold came out he said he found no trouble with Salgue's heart.

Among the questions asked Salgue in this application were the following on pages 42 and 43:

"14. What are the names and residences of all the physicians whom you have personally employed or consulted during the last five years?"

Salgue answered, "Dr. Jas. T. Ross, of Macon, Ga."

"16. Has any proposal or application to insure your life been made to any company, association or agent on which a policy of insurance is now pending? Or has any such proposal or application ever been made for which in-

surance has not been granted, or on which a policy or certificate of insurance was not issued in full amount, and of the same kind as applied for? If so, state particulars, and the names of all such companies, associtions or agents."
He answered "None."

"19. Has any physician expressed an unfavorable opinion upon your life with reference to life insurance?"
To this he answered "No."

In his answers to the medical examiner appear the following:

"21. Have you ever had any of the following diseases? (And among those named was disease of the heart.)" To this he answered "No."

"23. Are you subject to dyspepsia?" To this he answered "No."

"24. Have you had during the last seven years any disease or severe sickness? If so, state particulars of each case and the names of the attending physicians." To this question he likewise answered "No."

Dr. C. C. Harrold, who had just been appointed one of the Aetna's examiners, made the examination in this case. He was quite a young man, had been practicing only three years, but, as will appear from the record, was highly accomplished, intelligent and confident. He testified in the case as one of the Aetna's witnesses and stated that he examined Salgue in the forenoon of July 8, 1905, in the inner room of the company's office at the brick yard; that he asked the questions laid down in the medical examination blank, and wrote out the answers as received from Salgue. That when he asked him as to disease of the heart there was a discussion, and that at the end of it he, Harrold, wrote the answer "No." (Record, p. 129.)

Salgue said in the discussion he had been told he had heart disease, but he had no symptoms of heart disease, and thought he did not have it.

Harrold says he went into it closely with him and asked him the symptoms a person would have who had heart disease, and Salgue said he had none of them and had never been treated for heart trouble. Harrold adds that he then put down the answer "No," and went into the physical examination later on.

Harrold further states that Salgue mentioned in connection with heart disease the names of two doctors, namely Little and Winchester, that he could not remember which one of them Salgue said told him he had it, and which did not, but that Salgue did not name McAfee. (Record, 129-130.)

Harrold then states he took Salgue into the company's office and stripped him and examined him thoroughly (testifying as to this matter in detail), and reached the conclusion there was nothing wrong, at least that he could find. This account is found on pages 130 and 131, which contain a highly intelligent discussion of his examination and the nature of mitral murmurs. In it Harrold states a mitral murmur can be much more apparent at one time than another.

On page 131, foot, and returning to Salgue's statements about his heart, Harrold uses this language:

> "I did not, during the conversation with Mr. Salgue, either in or out of the office or in the room, as to the condition of his heart or his previous health, get any information from him or impression from him that he had applied for life insurance and been turned down. No, sir; he did not tell me that this information the doctors had given him and which he conveyed to me, was while he was being examined for life insurance. No, sir; I do not remember his mentioning the time at all when those things had been said to him. As to whether, when he mentioned Dr. Little's name, anything was said about Little being examiner for the Penn Mutual, nothing was said about the doctors with reference to insurance at all. No, sir; no allusion was made by

him to the continuous treatment for several months by Dr. McAfee; he never mentioned Dr. McAfee's name at all to me. No, sir; he didn't mention any continuous treatment by any doctor."

And again, commencing on page 132, Harrold makes this most important statement:

"His appearance was that of a very strong and physically perfect man, quite well developed. Yes, sir; he had a deep chest. Yes, sir; a man could have that appearance and with that appearance have an organic disease of the heart that would escape attention, the beginning of an organic disease of the heart. Understand me, I said before, I think it should not have escaped attention, but it could do it. Yes, sir; with all of his appearance, he might have an organic affection of the heart which would necessarily result fatally in later years and that escape attention, if he lived long enough for it to kill him. Yes, sir; he could have an affection from which he could not recover."

Harrold uses this language on page 132:

"No, sir; if I had know at the same date that before the 19th of June, 1905, Dr. W. J. Little had examined this man for the Penn Mutual for the purpose of insurance in that company and turned him down, refused to recommend him as an insurable risk because of the condition of his heart, I would not have recommended for insurance in the shape I recommended him there; I would have recommended that he be held up and watched. No; I would not have inquired of Dr. Little about it; I would have reported the fact to the home office and gotten them to inquire, or advised them to inquire."

Again, on page 136 of the record, Dr. Harrold says this:

"I would not have recommended Salgue, if, at the time of making the examination for the Aetna, I had

known or been informed by him that he had a short time previously, say within a month, gone to Dr. Little for examination for insurance in the Penn Mutual, and had been by Dr. Little turned down with the statement that he had heart trouble and advised him to go to his own doctor, and had immediately gone to Dr. McAfee with the statement from Little, that he had heart trouble, and McAfee had then examined him and told Salgue himself that he had heart disease, and afterwards treated him for it."

Mr. F. W. Bidwell was also introduced by the defendant as an expert in matters of insurance. He was the supervisor for the Aetna Insurance Company at the home office, having charge of death claims, annuities, installments and various other duties connected with the company's business. He stated that, if in answer to the question whether any physician had ever expressed an unfavorable opinion upon Salgue's life with reference to life insurance, the information had been elicited that Dr. Little, in making an examination as the medical examiner of the Penn Mutual, had expressed to Salgue the opinion that he had heart trouble and advised him to go to his doctor, Dr. McAfee, who had in turn examined him and also declared to Salgue that his heart was affected, or that he had heart disease, the application would have been rejected.

He also testified that if Salgue had answered truly question No. 16, as to pending applications in other companies and the Aetna Company had learned of the application to the Sun Life, to the Provident and to the Prudential that were in fact then pending, the Aetna Company would not have issued a policy to Salgue without first investigating the pending applications. (Record, 138.)

Mr. Bidwell further stated if, instead of answering "No" to question 21, asked Salgue by Dr. Harrold, as to having heart disease, Salgue had said that he had been refused insurance by Dr. William J. Little, who told him that he had some heart trouble and advised him to do go to his own physician, and he had gone to his own physician, Dr. McAfee,

immediately thereafter, and had been told by him that he had heart disease, under the custom of the various companies and the rules and practice generally as I understand them, they would have declined to accept the application for insurance; we call it decline; reject would be the same thing. The companies would not have issued the policy on such an application—the general custom of companies. I give the same answer as to all companies, without regard to the Aetna. Yes, sir; the application would have been declined." (Bottom page 138.)

The result of the matter was that Harrold, misled by Salgue's splendid physique and powerful strength exhibited during the examination, and by his withholding from Harrold information which he should have imparted as an honest man, recommended him to the company for insurance, the policy was issued for $6,000.00, and duly accepted by Salgue.

THE VOLUNTEER LIFE.

Salgue's last application was made five days later to the Volunteer Life of Tennessee for $5,000.00.

On page 78 will be found question 4b., which, with the answer thereto, although made after the transaction with the Aetna, throws a flood of light upon the issue in this case.

The question is this:

> "B. Has any company or association ever declined to grant insurance on your life, or issued you a policy of a different kind, or for a sum less than that applied for, or has any physician ever expressed doubt as to your insurability? Answer yes or no."

His answer was "No."

Again, in answering this company's questions to its medical examiner he declares, on page 81, questions 21 and 22, that as far as he knew he was then in good health and it had been three months since he had been attended by a physician or professionally consulted one, and that was only for a bad

cold, for three or four days, and the name of the physician was Dr. J. T. Ross.

Salgue makes this answer here in the face of the fact that within ten days he had been treated by Dr. McAfee for heart disease and inside of thirty days had consulted Dr. Ross himself about his heart and been advised that he had heart disease.

Dr. Henry McHatton was the examiner for this company and testified that he examined Salgue on July 13, 1905, and discovered trouble with his heart. That Salgue had an enlarged heart with a mitral murmur. That he, McHatton, had been an examiner for various insurance companies for twenty-five or twenty-six years; that he wrote down in his report to the company that the applicant had a mitral regurgitant murmur, first sound not strong, apex about an inch below normal line and displaced to left; also that he had cardian disease, and the risk was poor. (Record, 90.)

McHatton stated further that he treated Salgue subsequently to the date of this examination and from the memorandum on his books he saw him on the 2nd, 3rd, 20th and 30th of March, and on the 13th and 15th of April, 1906. That when he saw him during this last series of visits his condition was exactly what he would have expected, taking into consideration his condition at the time of the examination for insurance. (Record, 71 and 72.)

Dr. McHatton then said this:

> "That was the progressive course of the disease, the continuance of the original organic disease. As to whether if he died on May 22d, was found dead lying on a railroad seat on a train or sitting on a seat, that would have been the natural course, that would be one of the natural terminations of his type of condition. They very often, in that condition, after they get to that point, die suddenly. Certainly, if he died in that manner, either sitting at home or on a train, without a struggle, that confirms my

opinion of the existence of the disease on July 13, 1905. There was not, in any one of those subsequent visits, anything to indicate that I was mistaken; I did not advise his employers at any time before this insurance was taken out that he was liable to die at any time; I saw one of his employers some time after the insurance, I cannot state how long afterwards, and I told him, so far as his usefulness was concerned, the man's days were over, I can't say how long that was after the examination; I think it was a considerable time. As to whether that is about the exact language, my impression is he came to see me about the man, and said he was a valuable man in his business, and he would be hard to replace, and my impression is I told him the man's days of usefulness were over; that he might sit around and direct his work for a certain length of time, but he could not do any more physical work. That is my impression of the conversation." (Record, 72 and 73.)

It may be well to add right here that Dr. H. P. Derry also testified for the defendant and states that while McHatton was treating Salgue he also listened at Salgue's heart and found he had the mitral murmur. The witness had an office with Dr. McHatton, and when Salgue came in to get a prescription, he, Derry, examined his heart and recognized that Salgue had heart disease. (Record, 76 and 77.)

We will conclude these excerpts from the testimony of the various medical men by giving some brief statements from the testimony of Dr. G. P. Gostin, who made the death proofs and gave the cause of Salgue's death as "thoracic aneurism," although in testifying, on page 149, he states it was not thoracic aneurism. It is hard to decide from his testimony what form of aneurism he really thought was the cause of death. He was first consulted professionally by Salgue on April 18, 1906, which was just three days after Dr. McHatton's last treatment of Salgue on the

15th. Gostin treated him nearly continuously until Salgue left for Indian Spring; treating him first for liver complaint and afterwards for aneurism. Says he saw him constantly, examined him thoroughly and found no trace of heart disease.

The significant part of his evidence is this: On page 152, he says he never saw Salgue before in his life until April 18th; that Salgue did not say anything that directed Gostin's attention to his heart, did not tell him that he had been under treatment by Dr. McHatton for his heart, nor did he tell him that Little had given an adverse opinion about his heart, nor did he tell him anything about McAfee's treatment. Salgue did not mention any previous sickness nor treatment by doctors.

Of course, under our view of this case, it does not matter whether the immediate cause of Salgue's death was aneurism, accident or some other cause wholly apart from heart disease.

DEFENDANT ENTITLED TO DIRECTION OF VERDICT.

The Aetna was certainly entitled to have a verdict directed in its favor. The form of its policy and application are so clearly stated that no applicant could possibly be misled in making with this company his contract of insurance. And where its questions are truly and honestly answered it will either not issue the policy applied for, or, if issued, the policy will be paid.

A comparison of the Aetna's form of policy and application with those of the other companies appearing in the record will show the Aetna's to be decidedly superior to them all. It is probably one of the best forms now used.

It will be recalled that Salgue's application to the Aetna was in point of time next to the last one made. This naturally gives to the Aetna the benefit or protection of all the transactions between Salgue and the other four companies

which took place in the preceding twenty-three days, from June 15th to July 8th, 1905.

Now, what were these transactions between Salgue and the other companies which are of such importance to the parties to this cause when they came together to make their contract of insurance?

Taking them in their order, we comment briefly on each.

The Penn Mutual examination was held on June 15, 1905. Dr. Little, the examiner, rejected Salgue, telling him he had heart disease and sent him to Dr. McAfee for treatment. McAfee found he had heart disease, told him so, and treated him for it. The Penn Mutual's agent, with the knowledge of Salgue, suppressed the Penn Mutual papers upon Salgue paying the fee of five dollars due Dr. Little. He then carried Salgue to another company.

This was the Sun Life of Canada to whom application was made June 28, 1905, less than two weeks after his experience with the Penn Mutual. Answering the Sun Life's questions he declared that no physician had ever given an unfavorable opinion on his life; also that no application had been made by him to any company or agent and afterwards withdrawn or was not yet completed. He answered Dr. Barron that he was not aware of any circumstances not disclosed in his answers to the agent or Barron which might have an unfavorable bearing upon the desirability of the risk. He also warranted that his answers were full and true and that he was then and usually in sound health.

All this in the face of what had occurred between himself and the agent of the Penn Mutual, Dr. Little and Dr. McAfee; not only so, but the court will note that he gives to the Sun Life agent and medical examiner not even a remote hint of his consultation with Dr. Ross which occurred immediately after Salgue's interviews with Dr. Little and Dr. McAfee, which consultation Salgue himself procured, and in which Ross told him with sorrow, as he relates, but in unmistakable terms, that he, Salgue, had heart disease and there could be no mistake about it.

With these necessarily deliberate and wilful concealments and untrue statements made by Salgue, Dr. Barron naturally passed him.

Salgue applied to the Provident Savings Company the very next day after Barron passed him. Answering the questions asked by the Provident agent in its application, Salgue declared that he was not negotiating for life insurance. He had, in fact, applied to the Sun Life two days before and that application was pending. He was asked to state if he was negotiating to give the company and the amount. To this he answered "No," although this was exactly such information as the company was entitled to have. Barron again passed him.

Salgue next applied to the Prudential on July 6, 1905. He declared in answering the agent's application that no company or association had ever declined to grant insurance on his life. He also made the same declaration to the medical examiner whose question was somewhat more sweeping. He makes these answers in the face of the recent transaction between himself and the Penn Mutual.

Also in answering the questions of Dr. Winchester, the medical examiner for the Prudential, he made no reference to the fact that Little had examined him for insurance and refused to pass him, that McAfee had examined him, told him he had heart disease and treated him for it, and that he had then gone to Dr. Ross for an independent consultation and been told by Ross likewise that he had heart disease. Winchester passed him.

Two days later he applies to the Aetna.

One Ray, the company's local agent, wrote out the questions as Salgue answered them, although Hawkins, the general agent, was present also. Dr. Harrold, the medical examiner, was not present when the application was filled out. Both agree that while this was going on Salgue remarked that a doctor had told him he had heart disease, and Hawkins told him that that was for the company's doctor to pass on when he came.

When Ray asked Salgue as to the names and residences of all the doctors whom he had personally employed or consulted during the last five years, he answered "Dr. James T. Ross, of Macon, Ga." This was palpably untrue, although it was on a line with his statements previously made to the other companies, for when asked as to who was his physician he had said in every instance, Dr. Ross.

This, however, was the first time such a question had been asked him and the untruth of the answer is in the fact that within six months he had either employed or consulted Dr. McAfee, Dr. Little, Dr. Winchester and Dr. Barron. Numerous cases hold that the answer to a question of this character is distinctly material and the companies are entitled to a full statement from the applicant.

Again he was asked whether any proposal or application to insure his life was then pending. He answered "None," while, in point of fact, there were then pending applications for policies in the Sun Life, the Provident and the Prudential. Also he was asked the question, whether any proposal or application had ever been made for which insurance had not been granted. He answered "None," yet within less than thirty days he had made an application to the Penn Mutual which had not been granted on account of Little finding he had heart disease and informing him of that fact, and that he could not pass him on that account.

We call special attention to the fact that two separate inquiries are made in this question as numbered, and then closed with these words: "If so, state particulars and the names of all such companies, associations or agents." In spite of this request he answered "None."

He was also asked, "Has any physician expressed an unfavorable opinion upon your life with reference to life insurance?" To this he answered "No," while the truth was that not only had Dr. Little, after a thorough examination of Salgue as an applicant for insurance in the Penn Mutual expressed an unfavorable opinion upon his life with reference to life insurance, but had actually refused to pass

him, telling him the reason. Little had referred him to Dr. McAfee. Salgue explained to McAfee what had transpired and why Little had sent him and McAfee concurred in Little's opinion and proceeded to treat him for heart disease.

This is not all, for in our opinion the worst feature of this whole case is that just after Little and McAfee had examined him and told him he had heart disease, Salgue went to his own regular physician, Dr. James T. Ross, stated to Ross that he had been examined for life insurance and the doctor would not pass him because he had heart trouble, and he wanted Ross to listen at his heart and tell him whether, after listening at it he, Ross, would be willing to examine him with others and give him a testimonial to the effect that his heart was all right and he would be entitled to life insurance. Complying with his request, Ross stripped him and examined him, detected that he had heart trouble and told him that while he was sorry to have to say so, that, in his opinion, the doctor had acted correctly in saying that he would not pass him for life insurance.

Surely no question could have been more direct or more easily understood. It was not beclouded with words or involved with accompanying questions. It stood alone under its own separate number, having nothing about it to possibly mislead or confuse Salgue in making his answer to it. Now, can it be said that his answer comes up to the test laid down by Justice Harlan that the answers shall be "full, direct and honest?" Does it come up to Salgue's own solemn warranty that the statements signed by him in his application are "full, correct and true?" Can it be denied that we have here such a wilful concealment of fact as voids this policy under the statutes of Georgia, and under the decisions of this court?"

The answer fairly construed is simply that Salgue affirmatively declares that no physician has expressed an unfavorable opinion upon his life with reference to life insurance. Treating it then as an affirmative statement and not merely as concealment of facts which the company were

entitled to know, is it not such a wilful and fraudulent misrepresentation on Salgue's part as will void the policy and discharge the company?

The Georgia statute requires that the application must be made in the utmost good faith. Justice Harlan in laying down his test says, "that what the company requires of the applicant as a condition precedent to any binding contract was that he would observe the utmost good faith toward it." Who can be found that will say under the proven facts in this case that Salgue, in this instance, acted in the utmost good faith to the Aetna Company?

Is this not clearly a case of a failure by the applicant to state a material fact and committed under such circumstances as to make such failure necessarily fraudulent?

Let us now group the three statements that have just been recited above:

(1). First he declared that no proposal or application to insure his life was then pending, while in fact, three were actually pending at the time.

(2). He declares that no proposal or application for insurance has ever been made by him which was not granted, while in fact he had quite recently applied to the Penn Mutual and the policy had not been granted.

(3). That no physician had expressed an unfavorable opinion upon his life with reference to life insurance. While in fact, Little, McAfee and Ross, his personal physician, had informed him in unequivocal terms that he was not insurable. (Record, 42.)

We insist that everyone of these declarations is material to the risk. That under Salgue's warranty each one of these statements should have been "full, correct and true." That in point of fact, each one is *not full, not correct, and not true.*

The plaintiff will doubtless broadly reply to all these defenses that the Aetna's agents, Ray and Hawkins, and its

medical examiner, Dr. Harrold, were informed by Salgue on his examination that he had been told by a doctor that he had heart disease, and that another doctor had told him he did not have it. That this notice by Salgue to the agents of the company was notice to the company itself, and if thereafter it issued its policy to Salgue without further examination than the physical examination made by Harrold, the Aetna cannot plead ignorance and is stopped from defending.

We think the complete reply by the company to this contention of plaintiff is that Salgue deliberately concealed from Ray, Hawkins and Harrold, the company's three representatives, all the transactions had by him within the twenty days preceding, with the Penn Mutual, Sun Life, the Provident and the Prudential. And he specially concealed from these three agents of the Aetna his consultations with Dr. Ross and Dr. McAfee about his heart and the information and treatment given him.

Harrold nowhere testifies that Salgue did not have heart disease when he examined him in July 8, 1905. He does say that Salgue spoke of Drs. Little and Winchester talking to him about his heart, one saying he had heart disease and the other he did not. We now know from the record, of course, it was Little who told him he had heart disease, and Winchester who told him he did not have it, because Little turned him down when examining him for the Penn Mutual and Winchester passed him when examining for the Prudential.

Right here the court will note the cleverness of Salgue's statement. He tells Harrold that the two doctors were Little and Winchester, but Little had examined him on June 15, 1905, and Winchester did not examine him until July 6, 1905. In the intervening period he had been examined by Dr. McAfee, Dr. Barron and Dr. Ross, all of whom had carefully exaimned his heart, two of whom had unequivocally told him he had heart disease and one of them had treated him for it, and was treating him for it only a few days before Salgue made these statements to the representatives of the Aetna.

It is only fair to Harrold to say he testified that in his discussion with Salgue about his heart and the conflicting statements made by the two doctors named nothing was said by Salgue indicating the doctors in question had examined him for life insurance. That there was no reference to life insurance at all during their talk. That if he had known Little had turned Salgue down after examining him for the Penn Mutual, he, Harrold, would not have passed him, but would have held him up for further inquiry. And again, he states that if at the time of examining Salgue for the Aetna he had been told by him he had been examined by Dr. Little in his application to the Penn Mutual and had been told by Little he had heart trouble, and upon Little's advice had gone to McAfee, carrying Little's message and McAfee had in turn examined him and also told Salgue he had heart disease and treated him for it before he came to apply to the Aetna, he, Harrold, would not have recommended him.

The record further shows none of the statements made by Salgue to Ray, Hawkins and Harrold, outside of what appears in the questions and answers sent to the home office, was made known to any officer of the company.

F. W. Bidwell, of Hartford, who was the supervisor of the Aetna Company, and present at the trial, after showing he was an experienced expert in the insurance business, declared that if the company had known at the time of Salgue's application of his previous transactions with the other four companies, or if the answers to the questions in the Aetna's application had been honestly and fully made, the company could not have issued the policy.

Closing this branch of our discussion of facts, we make just this one more suggestion as affecting Salgue's good faith and truthfulness with the consequent result upon the respective rights of himself and the company in this suit.

The most misleading and effective of all false statements are those which are accompanied with a partial statement of the truth. This is exactly what Salgue did with the rep-

resentatives of the Aetna Company. He told just enough and then concealing the entire truth, obtained thereby a success which a disclosure of the whole truth would have made impossible.

We conclude these comments on Salgue's transactions with the various companies by a few words with reference to his dealings with the Volunteer Life, which took place a few days after his application to the Aetna.

Salgue declared to Collier, the Volunteer's agent, that no company or association had ever declined to grant insurance on his life or issued him a policy of a different kind or for a sum less than applied for, and that no physician had ever expressed doubt as to his insurability. This, of course, took place after the Aetna transaction was completed, but necessarily throws light on the question of Salgue's good faith and again is an instance of his deliberate concealment of the whole truth.

THE DOCTORS AND THEIR TESTIMONY.

There were nine physicians who testified in this case—Drs. Little, Barron, Winchester, Harrold, McAfee, Ross, McHatton, Derry and Gostin.

Let us classify them and their testimony:

Little, Barron, Winchester, Harrold and McHatton examined Salgue for life insurance; Barron examining him for two companies.

Little and McHatton refused to pass him, declaring he had heart disease.

Barron, Winchester and Harrold passed him. Of these three, Barron alone declared that if Salgue had had heart disease at the date of his examination on June 29, 1905, he, Barron, would have discovered it. Winchester and Harrold say that he may have had heart disease, but they did not on the dates of their examinations, July 6th and July 8th, find it out.

McAfee, Ross and Derry did not examine Salgue as examiners for insurance in any company. They had not even any quasi official connection with the litigation. All three of these testified in unequivocal terms that Salgue had heart disease. It is only just to state that McAfee and Ross knew when making their examination that Salgue had a few days before been turned down by Dr. Little. Derry also knew that McHatton was treating Salgue for heart disease.

Gostin, the doctor making the death proofs, and who was treating Salgue just a short time before his death, expressed the opinion that Salgue did not have heart disease, but states that he had never seen him before April 18, 1906, and knew nothing whatever of his previous medical history.

This analysis of the professional testimony shows that out of the nine physicians who testified, only two, to-wit: Barron and Gostin, sustained the contention of the plaintiffs that Salgue did not have heart disease, and even of these two, Gostin is the only one who plainly declares that there was no heart disease.

But if it be claimed by the plaintiff that this issue should have been left to the jury under the charge of the court, our reply is that the record discloses to any mind trained in sifting the truth out of human testimony that Salgue did not, in making his contract of insurance with the Aetna Company, act in the utmost good faith; that on the other hand, he acted fraudulently, and in failing to make full, correct and true answers to all questions, without evasion or fraud, and without suppression, misrepresentation or concealment of facts, with which the company ought to have been acquainted, he committed such a breach of his express warranty as to void the policy and discharge the company from all liability.

We, therefore, respectfully submit that the Aetna Company, under the undisputed facts of the case, was entitled to have a verdict directed in its favor.

DISCUSSION OF THE LAW

The contract sued on is a Georgia contract.

Insurance Co. *v.* Jeffords, 107 Federal Rep., 402;
Assurance Society *v.* Clements, 140 U. S., 226;
McCue v. North Western Ins. Co., 223 U. S., p. 234.

We quote from the policy and application such portions of each as are sufficient to show the contract between the parties:

"This policy of insurance witnesseth: That the Aetna Life Insurance Company, in consideration of the statements, answers and warranties contained in or endorsed upon the application for this policy, which application is copied hereon and made a part of this contract, and in further consideration of the annual premium * * * ." (p. 36 of the record.)

"This policy is issued and accepted subject to the conditions, provisions and benefits printed on the reverse of this page, which are hereby referred to and made a part hereof." (p. 37 of the record.)

"Section 1. This policy shall not take effect until the first premium hereon shall have been actually paid during the lifetime and good health of the insured * * * ." (p. 37 of the record.)

"Section 7. All agreements by said company are signed by one of its executive officers. No agent or other person not an executive officer can alter or waive any of the conditions of this policy, or make any agreement binding upon said company." (p. 39 of the record.)

"Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am in good health, of sound body and mind, and that the following statements signed by me are full, correct and true; and that I have no knowledge or information of any disease, infirmity or circumstance not stated in this application

which may render insurance on my life more hazardous than if such disease, infirmity or circumstance had never existed; and I do hereby agree that the declarations and warranties herein made, and the answers to the following questions, together with those signed by me on the second page of this application, shall be the basis and form part of the contract (or policy) between me and the said company, and that if the same be in any respect untrue, said policy shall be void; and I further agree that the insurance hereby applied for shall not be binding upon said company until a policy has been issued, nor until the amount of premium as stated therein has been received by said company, or its authorized agent, during my lifetime and good health, and a receipt given therefor, signed by an executive officer of said company; and I further agree that no statement or declaration made to any agent, examiner or other person, and not contained in this application, shall be taken or considered as having been made to or brought to the notice or knowledge of said company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its executive officers, and that no other person can grant insurance or make any agreement binding upon said Company." (pp. 40 and 41 of the record.)

We desire especially to call the attention of the Court to the following questions and answers made by Salgue in applying for insurance in the Aetna Life Insurance Company.

Question:

"14. What are the names and residences of all the physicians whom you have personally employed or consulted during the last five years?"

Answer: "Dr. James T. Ross, Macon, Ga."

Question:

"16. Has any proposal or application to insure your life been made to any company, association or agent on which a policy of insurance is now pending? Or has any such proposal or application ever been made for which insurance has not been granted, or on which a policy or certificate of insurance was not issued in full amount, and of the same kind as applied for? If so, state particulars and the names of all such companies, associations or agents."

Answer: "None."

Question:

"19. Has any physician expressed an unfavorable opinion upon your life with reference to life insurance?"

Answer: "No."

Question:

"21. Have you ever had any of the following diseases? Answer 'yes' or 'no' opposite each. If 'yes', state the date, duration and severity of illness. Disease of the heart?"

Answer: "No."

Question:

"23. Are you subject to dyspepsia, dysentery or diarrhoea?"

Answer: "No."

Question:

"24. Have you had during the last seven years any disease or severe sickness? If so, state the particulars of each case and the names of the attending physicians."

Answer: "No."

(Record, 42 and 43.)

We desire also to call especial attention to the following language which appears as the opening words of the application made to the Aetna Insurance Company and signed by Salgue:

> "If any error is found in the statements and answers of the applicant, note the same and return

the policy to the Home Office of the Company for correction." (Certificate of Clerk U. S. Circuit Court amplifying the record in the Circuit Court of Appeals.)

The following sections of the Code of Georgia, contain that portion of the statute law pertinent to this case:

Sec. 2479. "Application, Good Faith. Every application for insurance must be made in the utmost good faith, and the representations contained in such application are considered as covenanted to be true by the applicant. Any variation by which the nature, or extent, or character of the risk is changed will void the policy."

Sec. 2480. "Effect of Misrepresentation. Any verbal or written representations of facts by the assured to induce the acceptance of the risk, if material, must be true, or the policy is void. If, however, the party has no knowledge, but states on the representation of others, *bona fide*, and so informs the insurer, the falsity of the information does not void the policy."

Sec. 2481. "Concealment. A failure to state a material fact, if not done fraudulently, does not void; but the wilful concealment of such a fact, which would enhance the risk, will void the policy."

Sec. 2483. "Wilful Misrepresentation Voids Policy. Wilful misrepresentation by the assured, or his agent, as to the interest of the assured, or as to other insurance, or as to any other material injury made, will void the policy,"

Sec. 2499. "The principles before stated as to fire insurance, wherever applicable, are equally the law of life insurance."

We desire to call attention to the case of the Security Mutual Company *v.* Webb, decided by the Circuit Court of Appeals of the 8th Circuit. 106 Federal Reporter, p. 808.

This case is of peculiar value in that it is very similar in its facts to one branch of the case at bar.

Webb was asked this question:

"Has any proposal or application to insure your life ever been made to any company, association or agent upon which a policy has not been issued, or upon which a policy has been issued at a higher rate than that applied for? If so, state full particulars, to what company or association, when, etc."

Webb answered "No."

In our case Salgue was asked whether any proposal or application had ever been made to any company, association or agent for which insurance had not been granted and if so, to state the particulars and names of all such companies, associations or agents. He answered "None."

Webb lived in Denver and had previously applied to the Mutual Reserve Fund Life Association of New York for a policy on his life for $10,000.00. He had answered and signed the application in that company and had also answered and signed the medical examination, but had refused to furnish the medical examiner certain information which was needed for the examiner's report to the company, and upon his continued refusal he was notified by the home office that the company declined to insure him. It was about five months after this transaction with the Mutual Reserve Company that he made the answer set out above in his application to the Security Mutual Life Co.

We will not further set out the facts in the Webb case except to repeat that they are very similar to Salgue's and in both cases are not disputed. In the Webb case, as in Salgue's case, the trial court after hearing all the evidence, directed the jury to return a verdict in favor of the plaintiff for the full amount of the policy, which was $10,000.00.

Judge Thayer, in delivering the opinion of the court, uses this language, beginning at the bottom of page 810.

"The facts aforesaid are undisputed, and, as they constitute all the proof bearing upon the first of the above mentioned defenses to the policy in suit, it becomes a question of law whether the statement made by Webb in his application for said policy, to the effect that he had not made any proposal or application to any company or agent to insure his life upon which a policy had not been issued, was true or false.

"If it was a false statement then the contract of insurance was thereby rendered null and void, in as much as the parties had agreed in the application that a false statement therein contained should have that effect, and had further recited in the policy that the application should be deemed a part thereof. The rule is well established, and is not controverted, that such agreements as these must be enforced, especially as respects false statements contained in an application with reference to material matters, and as respects statements which the parties have agreed shall be material."

Citing Jefferies *vs.* Ins. Co. 22 Wall, 47; Insurance Co. *vs.* France, 91 U. S. 510;

Judge Thayer follows this up by a powerful and convincing argument upon the respective rights and duties of the two parties to an insurance contract, which begins on top of page 811 and concludes near top of page 814.

The judgment of the trial court in this case was reversed and a new trial ordered.

We desire also in this same connection to call the attention of the Court to the case of Farrell *vs.* Security Mutual Life Inusurance Co., decided by the Circuit Court of Appeals for the Second Circuit, and reported in 125 Fed. Rep. 684.

In the case of a warranty the answers must be true to jus-

tify a recovery. The agreement of the parties that the statements made in the application are true, and if untrue in any respect the policy is void, removes the question of their materiality from the consideration of the court or jury.

Aetna Insurance Co. *v.* France, *et al.*, 91 ~~General~~ Rep. p. 510.

Under the contract (policy), in this case, the questions and the answers thereto made by Salgue in the application and to the medical examiner are warranties, and he was bound by the truthfulness of his answers to these questions. (Wood case, 120 Ga., 328.)

The contract made each and every question and answer material. The law does not forbid parties contracting for life insurance to stipulate that the validity of a policy shall depend upon conditions or contingencies such as are embodied in the Aetna policy sued on.

Moulor v. Insurance Co., 111 U. S., p. 341 (top).
Phoenix Insurance Co. v. Raddin, 120 U. S. p. 189.

A contract embodying the material parts of the contract sued on in this case has been interpreted by this Court in the case of Aetna Insurance Co. *v.* France, *et al.*, 91 U. S., p. 510. Also in Jeffries *v.* Life Insurance Company, 22 Wallace, p. 47. In both of these cases the parties held to the truth of the statements warranted and made a part of the contract.

III.

THE COURT COMMITTED ERROR IN REFUSING TO CHARGE THE JURY AS REQUESTED BY THE AETNA LIFE INSURANCE COMPANY.

At the conclusion of the evidence in the case the Aetna Life Insurance Company requested the Court to charge the jury as follows. The requests on the part of the Aetna Insurance Company were refused by the Court.

The first request made by the Aetna Insurance Company was as follows: (p. 170 of the record.)

> "I charge you that in this State,
>
> "Where an applicant for life insurance covenants in his application that the statements made to the medical examiner are true, and these statements are made a part of the contract of insurance, and form the basis of such contract, any variation in any of them which is material, whereby the nature or extent or character of the risk is changed, will avoid the policy, whether the statement was made in good faith or wilfully or fraudulently."

The Trial Court also refused the following request to charge: (p. 170 of the record.)

> "Wherever an applicant for life insurance makes material representations in his application or examination, and covenants that they are true,—and these representations are made the basis of the contract of insurance, such contract is void if the representations vary from the truth in such a manner as to change the nature, extent or character of the risk. This is true, although the applicant may have made the representations in good faith, not knowing that they were untrue."

We group these two requests to charge which lay down the broad proposition of law governing this case. Both these requests are based upon the five sections of the Code of the State of Georgia set out above, and are substantially in the language used by the Supreme Court of Georgia in the case of the Supreme Conclave of the Knights of Damon *v.* Wood, 120 Ga., 328, 336 and 337. This Wood case is the Georgia law and has never been questioned, modified or reviewed. The first head-note of that case is as follows:

> "Where an applicant for life insurance covenants in his application that the statements made to the

> medical examiner are true, and these statements are made a part of the contract of insurance and form the basis of such contract, any variation in any of them, which is material, whereby the nature or extent or character of the risk is changed, will avoid the policy, whether the statement was made in good faith or wilfully or fraudulently."

In this case Wood had heart disease and applied for insurance in the Company and a policy on his life was issued to him. In securing the policy he warranted his answers to the medical examiner to be true in the following language:

> "The accompanying statement by me to the medical examiner is made by me as a part of this petition, and I hereby covenant that the same is true." (p. 329.)

He was asked if he had heart disease and he answered "No," when in truth and in fact at the time of his answers he did have heart disease. The fact of his having heart disease was unknown to Wood at the time he made the answers. The Supreme Court of Georgia in passing on this case uses the following language on page 337:

> "Wherever an applicant for life insurance makes material representations in his application or examination, and covenants that they are true, under the above section of the Code, and these representations are made the basis of the contract of insurance, such contract is void if the representations vary from the truth in such manner as to change the nature, character or extent of the risk. This is true although the applicant may have made the representations in good faith, not knowing that they were untrue."

No stronger language could be used by the Court. Applying it here, if Salgue had heart disease at the time of his application and examination he could not recover. The

requests to charge, therefore, were the law of the case and the Court should have given them to the jury.

The Trial Court also refused a request to charge the jury as follows: (p. 171 of the record.)

> "The application of Salgue, the insured, to the Aetna Life Insurance Company, contained the following statement, made on July 8, 1905, his policy being issued July 15, 1905:
>
> " 'Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am now in good health, of sound body and mind, and that the following statements signed by me are full, correct and true; and that I have no knowledge of information of any disease, infirmity or circumstance, not stated in this application, which may render insurance on my life more hazardous than if such disease, infirmity or circumstance had never existed; and I do hereby agree that the declarations and warranties herein made, and the answers to the following questions, together with those signed by me on the second page of this application, shall be the basis and form part of the contract (or policy) between me and said Company, and that if the same be in any respect untrue, said policy shall be void.'
>
> "Now, I charge you that if Salgue, by a written answer in his said application to a question as to whether he had heart disease answered 'No,' such answer being warranted and covenanted to be true in his application, he is bound by his covenant without regard to his good faith in making the representations, and if such statement made as to his not having heart disease was untrue, then the policy issued to him by the Aetna Life Insurance Company would be void."

This request sets out the warranty made by Salgue in his application and applies the same to his answer to a

question by the medical examiner if he had heart disease, and to which he replied "No." The Court was asked to charge the jury if these recitals were true and Salgue's answer was untrue, then the policy would be void. We say that we were entitled to this charge under the case of Supreme Conclave of Knights of Damon *v.* Wood, already cited.

The Trial Court also refused the following request to charge: (p. 172 of the record.)

> "The insured, Salgue, in answer to a question asking for the names and residences of all of the physicians whom he had personally employed or consulted during the five years next preceeding July 8, 1905, answered 'Dr. James T. Ross, Macon, Ga.' Now, if you believe from the evidence that the insured had, as a matter of fact either personally employed or consulted Dr. W. J. Little, Dr. J. C. McAfee and Dr. W. R. Winchester, in addition to Dr. Ross, and within a few days prior to July 8, 1905, I charge you that this would be a material misrepresentation, because such answer withheld from the Aetna Insurance Company very important sources of information, which it was entitled to have in response to said question."

This request was based on question 14, and the answer thereto given by Salgue in his application to the Aetna Insurance Company. The question was as follows:

> "14. What are the names and residences of all the physicians who you have personally employed or consulted during the last five years?"
>
> Answer, "Dr. Jas. T. Ross, Macon, Ga." (See Record, p. 42.)

This question called on Salgue to give the names and residences of all the physicians he had personally employed or

consulted during the five years next preceding his application to the Aetna Insurance Company. Salgue gives the name of only one physician he had employed or consulted during five years. The Court in this request was asked to charge that this answer would be a material misrepresentation because it withheld from the Company important sources of information which it was entitled to have. The special facts of this case make this question and its answer very material.

It will be recalled there was no conflict as to the number of physicians consulted by Salgue or their names, and that these consultations were at different times between June 15, 1905, and July 8, 1905; June 15th being the date of the examination by Dr. Little for the Penn Mutual Company, and July 8th the date of his application for insurance in the Aetna Life Insurance Company. Clearly this was material information to which the Company was entitled and the withholding of which should avoid the policy.

The parties to this contract fairly intended that this question and the answer thereto should be considered a material warranty, and, as was stated in the case of Phoenix Insurance Company *v.* Raddin, 120 U. S. p. 189. "Parties may by their contract make material a fact which would be otherwise immaterial, or make immaterial a fact that would be otherwise material."

Now, if this question is, as we claim, a material question, the answer is not sufficient and the policy issued thereon was voided. If it was material we were entitled to know each and every physician consulted within the prescribed time. This Court says in the Raddin case, cited above, p 190:

> "If one applying for insurance upon a building for fire insurance is asked whether the property is incumbered and for what amount, and in his answer discloses one mortgage when in fact there are two, the policy issued thereon is voided."

Defendant contends that this question and the answer elicited thereby was material, and Salgue's failure to give

the name and address of each and every physician consulted by him during the specified time voided the policy.

Fidelity Mutual Life Insurance Co. *v.* Jeffords, 107 Fed. Rep., p. 408.

Moulor *v.* American Life Insurance Co., 111 U. S., p. 345.

The Trial Court also refused the following request to charge: (Record, 172.)

"The insured was also asked this question by the Aetna Company's agent:

"Has any proposal or application to insure your life been made to any Company, association or agent on which a policy of insurance is now pending? Or has any such proposal or application ever been made for which insurance has not been granted or on which a policy or certificate of insurance was not issued for the full amount and of the same kind as applied for? If so, state particulars, and the names of all such companies, associations or agents.

"To this question he answered, 'None.'

"Now, I charge you that if you believe from the evidence there were pending at that time applications for insurance in other companies, associations or agents, or that an application had been previously made by the insured to the Penn Mutual Company, upon which insurance had not been granted, then this reply upon the part of the insured would be a material misrepresentation of fact, whether such answer was made in good faith or not, and under the terms of the application signed by the insured, such answer would render said policy void."

This request to charge was based on the question to Salgue as to whether any proposal or application to insure his life had ever been made to any company, association or agent

for which insurance had not been granted, and his answer was "None." The Court was asked to instruct the jury that if it appeared from the evidence that an application had been previously made by Salgue to the Penn Mutual upon which insurance had not been granted, then his denial would be a material misrepresentation of fact, and whether the answer was in good faith or not it would render the policy void. Certainly, the question was material, and the Company was entitled to an answer which spoke the truth. To answer honestly, Salgue must have answered "Yes." This would have put the Company on inquiry as to why the policy has not been granted and disclosed his entire transaction with the Penn Mutual Company. The untruthful answer was a distinct violation of that good faith required of him by law, and was such a variation from the truth as to make the policy void.

On this proposition we cite Code of Georgia, Sections 2479 and 2480;

Security Mutual Insurance Co. *v.* Webb, 106, Fed., 808.

In this case, Security Mutual Insurance Co. *vs.* Webb, 106 Federal Reporter, page 812, Judge Thayer, says:

> "A person makes a proposal for insurance to an insurance company or its agent, when with a present purpose of taking out a policy for a certain amount, he goes before the company's agent and makes his purpose known, and tenders himself for such an examination as the company may elect to make before it decides to accept the risk."

And again on the same page:

> "The proposal for insurance is, in a legal sense, made when the applicant announces his willingness and desire to take out a policy of a given kind and amount at a specified rate of premium, and when he tenders himself for such an examination as the insurer desires to make."

For a full discussion of this same subject, see pages 812, 813 and top 814.

See also Webb *vs.* Insurance Co., 126 Fed. Rep. 635.

The Trial Court also refused the following request to charge: (Record, p. 173.)

> "The insured, Salgue, was asked the following question:
>
> "'Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? If so, state particulars.'
>
> "To this question he answered 'No.'
>
> "Now, if you believe from the evidence that within a few weeks prior to July 8, 1905, the date of his application to the Aetna Company, Salgue, the insured, was examined by Dr. Wm. J. Little, as the medical examiner for the Penn Mutual Insurance Company, who told Salgue in substance that his heart was in such condition that he could not recommend him for life insurance, advising him to see his own doctor about his heart, and that on the same day Dr. J. C. McAfee, to whom Salgue had been referred by Dr. Little, examined Salgue and expressed a like unfavorable opinion as to the condition of Salgue's heart, and made such opinion known as to Salgue, then I charge you that under the terms of the said application and Salgue's warranty therein, said policy would be void, and Salgue's administrator would not be entitled to recover against the Aetna Life Insurance Company, because if such are the facts, Salgue's answer would be untrue, and be a material misrepresentation and void the policy."

The request to charge contained in this assignment sets out that Salgue was asked, "Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? If so, state particulars," and Salgue answered "No." Based on this recital, the Court was requested to

charge the jury, "Now, if you believe from the evidence that within a few weeks prior to July 8, 1905, the date of his application to the Aetna, Salgue was examined by Dr. Little, as the medical examiner for the Penn Mutual, who told Salgue that his heart was in such condition that he would not recommend him for life insurance, advising him to see his own doctor about his heart; that on the same day Dr. McAfee, to whom Salgue had been referred by Little, examined Salgue, expressed a like unfavorable opinion as to the condition of his heart and communicated such opinion to Salgue, then I charge you that under the terms of the application and Salgue's warranty therein, the policy would be void, because if such are the facts, Salgue's answer would be untrue and be a material misrepresentation and void the policy."

The Court refused to give this charge, although there there was absolutely no conflict or issue as to the recitals contained in the requested instruction. In point of fact the recital in the request might have been made stronger, for it does not include a reference to the evidence of Dr. Ross, who immediately after Salgue's consultations with Dr. Little and Dr. McAfee and their examinations and opinions about his heart, with reference to life insurance, went to Ross as his original personal and family physician, told him what had occurred with reference to his application in the Penn Mutual; that he had been turned down and what had been said to him by Little and by McAfee, and asked Ross to examine him and tell him whether he was or was not insurable. Thereupon Ross examined him and told him that Little and McAfee were correct and that he had heart disease which made him non-insurable.

The record will show that this question, which is number nineteen, on page forty-two, is the last question asked and answered. It stands alone and is not confused as is so often the case with several other questions, bunched together under the same number. It contains less than two printed lines and asks in the simplest language if a doctor had given him an adverse opinion with reference to life insurance. It is evident that the Company deliberately re-

stricted the question of a medical opinion on the applicant's health in connection with life insurance. Because, if truly answered, it could obtain from the company or companies whose medical examiners had reported adversely material information for its own protection.

Clearly, this question and Salgue's answer thereto are so vitally material, so clearly within this contract of warranty, so entirely fail to comply with his agreement that his answer should be full, correct and true, that the company was entitled beyond all question to have these requested instructions given to the jury.

Not only so, but upon that question and answer alone, together with the evidence in the record touching the same, the trial judge should have unhesitatingly directed a verdict in favor of the defendant. It will be recalled, too, that nowhere in the record does it appear that Salgue communicated the facts as to what had occurred between himself and Doctors Little and McAfee except to Ross, his family and personal physician. He deliberately withheld these facts from every physician who examined him for insurance after Little had refused to pass him. We submit that the lack of good faith, the fraudulent misrepresentations, the wilful concealment of so material a fact necessarily voids this policy and entitles the Aetna to a verdict.

We cite the case of the Northwestern Company against Montgomery, 116 Ga., 799. This case is decided in 1902. Chief Justice Simmons delivering the opinion of the Court. We quote the second head-note in full:

> "Where it is shown that a material statement made in such application was false, that its falsity was known to the insured at the time it was made, that it was made with a view to procuring the insurance, that the company had no notice of its falsity and that the company acted upon it to its injury, the law will conclusively presume an intent to deceive, and a case of actual fraud will be made out, although the insured may not have really intended to prejudice the rights of the company."

We also beg to call the Court's attention to the paragraph in the opinion beginning near the bottom of page 809, as follows:

> "Of course intention is generally a question for the determination of the jury and the conduct of the parties as showing a fraudulent intent is generally for their consideration. But in the present case the facts were such that they could properly have made but one finding. The applicant for insurance made in his application a false statement with reference to a material matter of fact; this statement was false within his knowledge; it was made with a view to procuring the insurance, was made deliberately and with an agreement that it should be regarded as a warranty and as a part of the consideration of the contract of insurance; the company had no notice of its falsity and acted upon it to its injury. Purposely misstating this material fact in order to induce the company relying upon it to enter into a contract which might prejudice its rights would be consistent with no other intention than one to deceive the company. The intention to deceive, coupled with the other facts in the case, conclusively showed fraud in the legal acceptation of the term. What the applicant thought or intended with reference to the consequences of his falsehood cannot be material. He is presumed to have intended the natural consequence of what he purposely and knowingly did. We are therefore of opinion that the company completely made out its defense, and that the evidence of the plaintiffs was insufficient to overcome it. We are also of opinion that the Court erred, under the evidence adduced, in leaving the jury free to find that there was no bad faith or intent to deceive on the part of the insured and that a verdict for the plaintiff would be authorized."

We also rely on the provisions of 2479, 2480 and 2481 of the Code of Georgia.

We beg to again cite as particularly applicable to this question and answer, the language used by Justice Harlan in the Moulor case, as is quoted by Judge Shelby in the Jeffords case. Vol 107, Federal Reporter, p. 409.

We also beg to quote from the McElroy case, decided by the Eighth Circuit Court of Appeals, 83 Federal Reporter, the following language on page 636 of the opinion:

> "In other words, the honesty, good faith and truthfulness of the person whose life is insured forms the actual foundation of the agreement of life insurance. It is for this reason that contracts of life insurance are said to be *uberrimae fidei* and any material misrepresentation or concealment is fatal to them."

The Trial Court also refused the following request to charge: (Record, p. 174.)

> "I charge you, also, that the instructions I have just given you as to the effect upon the insurance policy issued to Salgue by the Aetna Company, or the misrepresentations as to his death are to control you, notwithstanding the evidence may show that Salgue came to his death from a thoracic aneurism as claimed by the defendant."

This request was based upon the refusal of the Court to charge that if the evidence showed that Salgue came to his death from aneurism and not heart disease, that fact would still not affect the defense of the company. Why the Court refused to give this charge we cannot imagine. It was very probably overlooked, for certainly the correctness of the proposition is not subject to dispute.

The Trial Court also refused the following request to charge: (Record, p. 174.)

> "I charge you that the application of John A. Salgue to the Aetna Life Insurance Company contained the following statement: 'I further agree

that no statement or declaration made to any agent, examiner or other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of said company, or as charging it with any liability by reason thereof, and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its executive officers, and that no other person can grant insurance or make any agreement binding upon said company. This agreement is incorporated in and made a part of the policy of the Aetna Life Insurance Company sued upon.' In addition to this agreement between the assured and the insurance company, the following words appear upon the policy issued by the Company to the assured: 'If any error is found in the statements and answers of the applicant, note the same and return the policy to the Home Office of the company for correction.' By the agreement here quoted, from both the application and the policy issued to the assured, the power of the agent receiving the application and the power of the medical examiner of the insurance company was expressly limited and notice of such limitation was brought home to the assured by the agreement incorporated in the application which he signed and by the same agreement being embodied and being made a part of the policy issued to him by the Aetna Life Insurance Company. The power of the agent taking the application and the power of the medical examiner of the company being limited by this agreement, no verbal statement or declaration made to any agent of the company or any examiner of the company, or any other person connected with the company, and not contained in his written application to the company, should be taken or considered as having been made to or brought to the notice or knowledge of the Aetna Life Insurnace Company or as charging the said company with any liability by reason thereof."

The Trial Court also refused the following request to charge: (Record, p. 175.)

> "I charge you that it is competent for any party, corporation or individual, employing an agent in the negotiation of a contract, whether of insurance or otherwise, to limit his powers, provided the limitation is brought home to the knowledge of the other contracting party, otherwise the principal will be bound by the apparent as well as the actual powers of the agent; and as, in this case, the limitation was made a part of the contract between the parties it was binding upon them."

The Trial Court also refused the following request to charge: (Record, p. 176.)

> "I charge you further that the stipulation between the parties limiting the powers of the soliciting agent and the powers of the medical examiner and providing that the contract should be based upon the written application was binding upon the parties, and it was, therefore, immaterial what may have been said by or to the agents at the time of making the application or what may have been said by or to the medical examiner at the time he examined the applicant, which was not reduced to writing and presented to the officers of the company at the home office in Hartford, Conn."

We group these three requests to charge, which are based upon the refusal of the Trial Court to give to the jury what we submit was proper requests to charge, and were based upon the following language contained in Salgue's application:

> " * * * And I further agree that no statement or declaration made to any agent, examiner or any other person, and not contained in this application shall be taken or considered as having been made to or brought to the notice or knowledge of

said company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its executive officers, and that no other person can grant insurance or make any agreement binding upon said company." (Record, p. 41.)

As Salgue made the warranties and statements in his application the basis and agreed that they should form a part of the contract (or policy) between himself and the company, the above quotation from his application is important when considered in connection with his oral statements to Ray, Hawkins and Dr. Harrold.

Salgue is held in law to know the contents of the application signed by him and that upon this application the policy would be issued, if issued at all. It was his duty to read the application he signed.

See New York Life Co. *v.* Fletcher, 117 U. S., pp. 519, 529.

In the Fletcher case here cited the facts disclosed that to the policy was annexed the application and upon it was endorsed the following:

> "For the information of the assured, and in order that any unintentional errors or omissions which may hereafter be found to exist may be corrected, an abstract of the application upon which this policy is based may be found in the third page within. If corrections are desired, when satisfactory to the company, a certificate to that effect will be issued over the signature of the President and Actuary."
> 117 U. S., foot of page 520.

In the case at bar, at the top of the application attached to the Aetna policy occurs these words:

> "If any errors are found in the statement and answers of the applicant, note the same and return

the policy to the home office of the company for correction."

(Certificate of the Clerk of the United States Circuit Court amplifying the Record for the Circuit Court of Appeals.)

The clause attached to the Fletcher application seems to have impressed Justice Field, for we find in the body of the decision, on page 534, the following language:

> "There is another view of this case equally fatal to a recovery. Assuming that the answers of the assured were falsified, as alleged, the fact would be at once disclosed by the copy of the application, annexed to the policy, to which his attention was called. He would have discovered by inspection that a fraud had been perpetrated, not only upon himself but upon the Company, and it would have been his duty to make the fact known to the company. He could not hold the policy without approving the action of the agents and thus becoming a participant in the fraud committed. The retention of the policy was an approval of the application and of its statements. The consequences of that approval cannot after his death be avoided."
>
> New York Life Insurance Co. *v.* Fletcher, 117 U. S. 534.

The words attached to Salgue's policy were equally strong in calling upon him to read his contract with the Aetna Insurance Company and correct any errors that might be found therein.

"If he (Salgue) had read even the printed lines of his application he would have seen that it stipulated that the rights of the company could in no respect be affected by his verbal statements or by those of its agents, unless the same were reduced to writing and forwarded with his application to the home office. The company, like any other principal, could limit the authority of its agents, and thus

bind all parties dealing with them with knowledge of the limitation. It must be presumed that he read the application and was cognizant of the limitations therein expressed."

This language is taken from Justice Field's opinion, beginning at the bottom of page 529, ending at the top paragraph on page 530, in the Fletcher case just above cited.

Contracts, in writing, if unambiguous, must be permitted to speak for themselves and cannot by the Court, at the instance of one of the parties, be altered, contradicted by one of the parties.

> Assurance Company *v.* Building Assn., 183 U. S., p. 361.

The Supreme Court in this case refers with distinct approval to the Fletcher case in the 117 U. S. and pages 358, 359 and 360 are made up of one continuous quotation from the Fletcher case.

We beg to call particular attention to the argument of Justice Shiras on pages 361, 362 and 363 of the Insurance Company case in the 183 U. S.

It follows necessarily from the principals laid down in the Fletcher case and the Assurance Company case referred to so fully above, and from the cases cited in both opinions, that in view of the limitations placed upon the agents and examiner of the Aetna Company and expressly agreed to by Salgue in his application, the trial court should have given effect to these limitations by instructing the jury as requested by defendant's counsel.

> Representations made in writing in an application for insurance in response to written questions and warranted by the applicant to be true as the basis of the contract are thus made material by the action of the parties in so treating them; and their materiality is a matter of law arising from the contract to be declared by the Court and not a question for the jury."

The above is the third head-note in the case of Carrollton Company *v.* American Company, decided by the Second C. C. A., 124 Federal Reporter, 26.

This case is especially interesting in that on pages 30 and 31 the Court discusses the Chamberlain case in 132 U. S., 304; also the Fletcher case, 117 U. S., 519, and finally the Assurance Company case, 183 U. S., 308, calling attention to the dates of the decisions in the several cases, and making special reference to the Assurance Company case in the 183 U. S., as to wider scope covered and distinguishing it from the two preceding decisions.

The limitations upon the authority of the agents of the Aetna Company having been brought home to the knowledge of Salgue by the express terms of the application and policy, such limitation was binding and the written application and the policy were thereby made the sole basis of the contract of insurance; and oral statements of Salgue to the soliciting agents and to the medical examiner and not reduced to writing and incorporated in the application, form no part of the contract of insurance between the parties. This proposition is centainly substantially laid down by the Supreme Court of the United States in Fletcher's case, 117 U. S., and the Assurance Company case in the 183 U. S., to which we have so frequently already referred.

To the same effect is the latest declaration of the Supreme Court on the matter under discussion, as will appear from the second head-note in the Penman case, which is in this language:

> "Where the policy furnishes the only way by which its terms can be waived and expressly provides against modifications by customs of trade of manufacture, or by agents, and are unambiguous, Courts cannot admit parol testimony to alter the written words of the contract."
>
> See Penman *v.* St. Paul Co., 216 U. S., 311.

We call also to the Court's attention the language used by Justice McKenna near the close of the opinion, beginning at the bottom of page 321.

We desire especially to call attention to the facts as set forth in the opinion in the Penman case. There the local agent of the company, after consultation with the special agent, increased the insurance rate upon the property insured one hundred per cent, because he knew of the custom of miners to keep blasting powder in their residences. Notwithstanding this, the Court, in construing that contract, held the parties to the terms of the contract between them, stating on page 321:

> "The policy furnishes the only way by which its terms can be waived. * * * It provides that such waiver or change shall be written upon or attached to the policy. * * * They constituted the contract between the company and the assured. *No agent had power to change or modify that contract except in the manner provided.*"

The Trial Court also refused the following request to charge: (Record, pp. 176-177.)

> "I charge you further that whether the statements and answers contained in the application of the assured were the same statements made by him to the agents of the company securing his application and to the medical examiner of the company or not, yet, when he afterwards received the policy with a copy of the application attached and a memorandum endorsed thereon, calling his attention to the copy thus attached, with the request that any errors in the application be reported to the company, for correction, it was his duty to report any answers incorrectly written down and thus enable the company to correct them, and that by his failure to do so he must be presumed to have accepted the policy upon the faith of the answers therein contained, and to have acquiesced and agreed that it should remain as the basis of the contract of insurance."

We insist that as a matter of law we were entitled to have these instructions given to the jury. In support of this contention we cite

Swann *v.* Watertown Co. 96 Pa. St., p. 43;
American Insurance Co. *v.* Newberger, 74 Mo., 173;
Goddard *v.* Monitor Co., 108 Mass., p. 57.

We cite also that portion of the opinion of the Court in Fletcher's case, found on page 534 of the 117th U. S.

WAIVER AND ESTOPPEL.

It must be conceded in this case that the statement and representation contained in the question and answer wherein Salgue stated that he did not have heart disease were material to the risk to be assumed by the Aetna Company and that the insurance was made upon the faith of this answer and upon his agreement accompanying it that if it was false in any respect the policy to be issued upon it should be void.

The respondent here, the plaintiff in the trial court, seeks to meet and overcome this fact, which must be conceded, by bringing knowledge home to the company of Salgue's heart trouble by the notice given to Ray, the soliciting agent, Hawkins, the State Manager, and Harrold, the Medical Examiner, by which notice the company waived its right to set up as a defense to an action on the policy the falsity of the answer, and that the company was therefore estopped.

Under the evidence there can be no question of the fact that Salgue at the date of his application to the Aetna had heart disease, and the further fact that he knew he had it. Dr. Little told him so; Dr. McAfee told him so; Dr. Ross told him so, and all within about three weeks of the date of the Aetna application.

It is true when the Aetna application was being made out Salgue stated to Hawkins and Ray "that one doctor said he

had heart trouble." (Hawkins' evidence, p. 126 of the record) Hawkins referred him to the medical examiner, Harrold.

It is also true when Harrold examined Salgue there was a discussion between them about his heart. Salgue did not think he had heart disease; had been told he had; either Little or Winchester had told him so; one told him he had and one told him he did not. (Harrold evidence, p. 129-130 of the record.)

In the application signed by Salgue, he stated he did not have heart trouble. (p. 43 of the record.)

At the very beginning of this application were these words:

> "If any errors are found in the statements and answers of the applicant, note the same and return the policy to the home office of the company for correction." (Certificate Clerk U. S. Circuit Court amplifying the record in the Circuit Court of Appeals.)

The policy also contained these words:

> "I further agree that no statement or declaration made to any agent, examiner or any other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of said company, or as charging it with any liability by reason thereof?"

On this question we desire to call the attention of the Court to the following cases which we are satisfied control this branch of the case.

> "One who deals with an agent knowing that he is clothed with a circumscribed authority, and that his acts transcend his powers, cannot hold his principal; and this is true whether the agent is general or special, for principal may limit the authority of one as well as of the other."
>
> Slocum *vs.* N. Y. Life Ins. Co. 228 U. S., 374.
> Penman *vs.* St. Paul Fire Ins. Co. 216 U. S., 311.
> Assurance Co. *vs.* Building Assn. 183. U. S., 362.
> Fletcher vs. Insurance Co. 117 U. S., 519.

We do not see how the question of waiver and estoppel can enter this case.

It was clearly the intention of Salgue and the Aetna Company by contract to provide that no statement or declaration made to any agent or medical examiner, and not incorporated in the contract, should be taken or considered as having been made to or brought to the knowledge or notice of the company, or as charging it with any liability. (Record, p. 41.)

The language used is sufficient to create such a contract, and it is inconceivable to us how it can be said that such a contract is not binding on the parties.

The Aetna Company calls attention in words to each and every question and answer in the contract; it says here is your policy, read it and see if any mistakes have been made and if mistakes have occurred, send the contract back to us for correction. (Certificate Clerk of Circuit Court amplifying record to Circuit Court of Appeals.) It was Salgue's duty to read the application he signed. (Fletcher case, 117 U. S., p. 529.) He could not hold the policy without approving the answers to all questions as written down and signed by him in his application. (Fletcher case, 117 U. S., p. 534.)

If waiver and estoppel is held by this Court to deny to the Aetna Company the right to defend as to the falsity of Salgue's answer to question 21 of the application calling upon him to state if he ever had heart disease, what possible excuse can be offered to the false and untrue answers made by him to questions 14, 16, 19, 23 and 24 of the Aetna's application?

All of these questions were material warranties and Salgue in each answer stated what was untrue.

So we say (notwithstanding the Penman case (216 U. S., 311) says there is no waiver under just such a contract as existed between Salgue and the Aetna Company), if we are held to an estoppel as to this question No. 21, the untrue answers to the other material questions demanded a verdict at the jury's hands for the Aetna Company.

The trial court in this case followed the Jeffords case as decided by the Circuit Court of Appeals for the Fifth Circuit, 107 Fed. Rep., 402, in its construction of the statute law of Georgia applicable, and refused to follow the Supreme Court of Georgia in its construction of these same sections of the Code of Georgia. There arises, therefore, in Georgia a sharp conflict between the United States Courts and the Supreme Court of Georgia as to the interpretation of these statutes. It is a matter of great importance for the Supreme Court of the United States to finally determine the proper construction to be given these statutes. This is of great importance not only to every insurance company, both domestic and foreign doing business in Georgia, but also to every citiezn of the State holding a policy of insurance. If these divergent views remain unreconciled, then a domestic corporation in Georgia has a protection in the State Courts which is denied to a foreign corporation when sued in the United States Courts.

The Supreme Court of Georgia in the Wood case (Supreme Conclave vs. Wood, 120 Ga., 328) holds if a policyholder has secured a policy of insurance on a statement that was material and untrue the policy is void even where the applicant did not know the statement was untrue.

The Circuit Court of Appeals holds upon the other hand in the Jeffords case that although the statement be material and false, yet if made in good faith by the applicant, the policy is not void.

In Jeffords case the application did not contain the word "warranted," and the case was largely based upon the Moulor case, 111 U. S., 355.

In Moulor's case the Supreme Court says on page 342, "It is true that the word warranted is in the application; and, although, a contract might be so framed as to impose upon the insured the obligations of a strict warranty without introducing into it that particular word, yet it is a fact not without some signification that that word was not carried forward into the policy, the terms of which control when there is conflict between its provisions and those of the application. The policy upon its face characterizes the statements of the insured as representations."

In Wood's case the statements of Wood were unequivocally made warranties by the court's decision. It was held his answers were material and a variation from the truth would change the nature, extent and character of the risk. The Court in its discussion of this question on page 337 of the decision says:

"Whenever an applicant for life insurance makes material representations in his application and examination and covenants that they are true, under the above sections of the Code, and these representations are made the basis of the contract of insurance, such contract is void if the representations vary from the truth in such manner as to change the nature, extent or character of the risk. This is true although the applicant may have made the representations in good faith, not knowing that they were untrue."

In the case at bar there exists an unequivocal contract between Salgue and the Aetna Co. by which he warranted certain material answers to be true. In Jeffords case there was no warranty in the application. Jeffords case was based upon the Moulor case and in that case there was no warranty in the policy. In the case at bar no stronger language could be used by which the statements of Salgue forming the basis of the contract and material to the risk were warranted by him both in the application and in the policy to be true.

Under the pleading and evidence in this case the Aetna was not required to make any tender back of the premium paid.

Georgia Home Co. *v.* Rosenfield, 95 Federal, p. 362.

For a full discussion of this question, see pages 362 to 366.

Respectfully submitted,

A. L. MILLER,
M. D. JONES,
GEO. S. JONES,
WALTER DEFORE,
WALLACE MILLER,
CHAS. H. HALL, JR.

No. 33.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

FILED.
OCT 22 191
JAMES H. McKE

THE AETNA LIFE INSURANCE COMPANY,
Petitioner,

vs.

JOHN T. MOORE, ADMINISTRATOR OF
JOHN A. SALGUE, DECEASED,
Respondent.

BRIEF OF RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

HINTER WIMBERLY,
ALEXANDER AKERMAN,
JESSE HARRIS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 304.

The Aetna Life Insurance Company, Petitioner.

vs.

John T. Moore, Administrator John A. Salgue, Deceased, Respondent.

Writ of Certiorari, United States Circuit Court of Appeals for the Fifth Circuit.

Brief and Argument of Minter Wimberly, Alexander Akerman and Jesse C. Harris, of Counsel for Respondent.

STATEMENT OF THE CASE.

John T. Moore, administrator of the estate of John A. Salgue, filed suit against The Aetna Life Insurance Company and the Prudential Life Insurance Company, of America in the Circuit Court of the United States for the Western Division of the Southern District of Georgia, alleging that on the 15th day of July, 1905, the Aetna Life Insurance Company entered into a contract of life insurance whereby it insured the life of John A. Salgue in the sum of six thousand dollars.

At the same time, said John T. Moore, administrator, filed in the same court a petition against the Prudential Life Insurance Company of America and alleged that the Pruden-

tial Life Insurance Company of America entered into a contract of life insurance whereby it insured the life of John A. Salgue in the sum of five thousand dollars.

Petitioner alleged that both companies were indebted to the petitioner on said policies, as administrator, and that he, as administrator, had complied with all the terms and conditions of the policies.

The defendants filed separate answers admitting that a contract of life insurance had been entered into between them and John A. Salgue and admitted that proof of loss was made, but denied that they were indebted to said administrator, both insurance companies setting up that gross fraud was practiced upon them by the insured in the procurement of said policy, the answer setting forth in what particulars this fraud was perpetrated. The case against the two companies was called for trial, and on motion of plaintiff in the court below, the trial court passed an order consolidating the two causes of action. Exception was filed by both defendants to the order consolidating the two causes.

The case proceeded to trial and evidence was introduced by plaintiff establishing the allegations in the petition. Defendant introduced oral and documentary evidence, and after argument of counsel and charge of the court, the jury found a verdict in favor of the plaintiff in both cases.

Afterwards both defendants, hereinafter called the companies. filed their writ of error to the Circuit Court of the United States for the Southern District of Georgia from the United States Circuit Court of Appeals for the Fifth Circuit.

Both cases were argued at length by brief and oral argument in the said Circuit Court of Appeals for the Fifth Circuit, and both cases were affirmed.

Thereupon both companies filed their petition in this Honorable Court for writ of certiorari and this Honorable Court granted the writ.

BRIEF AND ARGUMENT.

The assignments of error made by the defendant in the trial court, on which they maintain that this Honorable Court should reverse the rulings of the Circuit Court and Circuit Court of Appeals, can be grouped under three heads:

First: The order of the trial judge consolidating for trial the action brought against this defendant with the action brought by the same plaintiff against the Prudential Life Insurance Company upon a policy of life insurance issued by it upon the life of said Salgue.

Second: The refusal of the trial judge to direct a verdict in favor of the petitioner.

Third: The refusal of the trial judge to charge the jury as requested.

FIRST.

Consolidating the Causes.

On the error assigned as to consolidating the causes, we respectfully submit that this was a proper exercise of the discretion of the trial court.

The authority of the judge in making this order is given in Section 921 of the Revised Statutes of the United States, which is as follows:

> "When causes of a like nature or relative to the same question are pending before a Court of the United States, or of any territory, the Court may make such orders and rules concerning proceedings therein as may be conformable to the usages for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so."

Under this section, we respectfully submit that the trial court had full power to consolidate the causes, and in reviewing this alleged error, this court must take into consideration the fact that at the time the order of consolida-

tion was entered, the trial court took the position that from an inspection of the pleadings, as will be seen from the records in both of these cases, that the same plaintiff was suing two insurance companies on two similar policies of life insurance upon the same life, issued about the same time, to which suits substantially the same defenses were interposed by the pleadings.

Under these circumstances, it would have been a waste of time to have tried the cases separately.

This Honorable Court has previously ruled that the consolidation of causes of like nature is within the discretion of the trial court, and this discretionary power of the court will not be set aside on bill of exceptions or writ of error.

> "Under Rev. Stat. Sec. 921, a Court of the United States may order actions against several insurers of the same life, in which the defense is the same, to be consolidated for trial against their objection."
> Mutual Life Ins. Co. *v.* Hillman, 145 U. S., 285.

And in the above stated case, Mr. Justice Gray, for the Court, said on page 293:

> "The learning and research of counsel have produced no instance in this country in which such an order made in the exercise of the discretionary power of the court, unrestricted by statute, has been set aside on bill of exceptions or writ of error."

It will be noted that no exception is taken to any ruling of the Court on the question of jury strikes, or the right of counsel for both defendants to be fully heard, nor is any exception taken to the charge of the Court in submitting the separate issue to the jury. It will be further noted that after the introduction of evidence the insurance companies did not move to withdraw the case from the jury and declare a mistrial.

The record shows conclusively that this plaintiff in error was not injured in any way by the order excepted to.

SECOND.

The Failure and Refusal of the Court to Direct a Verdict in Favor of the Insurance Company.

We respectfully submit that the Court committed no error in its refusal to direct a verdict for the defendant.

It is undoubtedly true that the policy in this case is a Georgia contract, and necessarily it follows that the law of Georgia will, therefore, be applied in construing and considering the contract; but the construction of the Georgia law will be taken in connection with the law as construed by the courts of the United States relating to contracts of life insurance.

The statute law of Georgia applicable to the case at bar will be found in the following sections of the Code of Georgia of 1910, Vol. 1:

> Sec. 2479. "Application, good faith. Every application for insurance must be made in the utmost good faith, and the representations contained in such application are considered as covenanted to be true by the applicant. Any variation by which the nature, or extent, or character of the risk is changed, will void the policy."
>
> Sec. 2480. "Effect of misrepresentation. Any verbal or written representations of facts by the assured to induce the acceptance of the risk, if material, must be true, or the policy is void. If, however, the party has no knowledge, but states on the representation of others, bona fide, and so informs the insurer, the falsity of the information does not void the policy."
>
> Sec. 2481. "Concealment. A failure to state a material fact, if not done *fraudulently*, does not void; but the wilful concealment of a fact, which would enhance the risk, will void the policy."
>
> Sec. 2483. "Wilful misrepresentation voids policy. *Wilful* misrepresentation by the assured, or his agent, as to the interest of the assured, or as to

other insurance, or as to any other material inquiry made, will void the policy."

Sec. 2499. "Law of fire insurance applicable. The principles before stated as to fire insurance, wherever applicable, are equally the law of life insurance."

We respectfully contend that the evidence for both the plaintiff and the defendant in the court below clearly establishes the fact that there was no fraudulent concealment of any material fact and no wilful concealment of any fact that would enhance the risk.

If the insurance procured, was with a fraudulent purpose on the part of the insured as against the company, or by means of representations which were intentionally fraudulent, even though they relate to matters not material, the policy is voidable; but to constitute such fraudulent representations as to void the policy on that ground, the representation must be made by the assured with the knowledge of its falsity and with intent that it be acted upon, and it must be actually acted upon by the company to its injury.

This is undoubtedly the law in the case, because Salgue told B. H. Ray, the soliciting agent, that he had applied to Mr. Adams, who was the manager of the Prudential Life Insurance Company, for a policy, and that his (Ray's) was $9.80 cheaper (Record, page 121). Therefore, it cannot be stated that Salgue made any fraudulent and wilful concealment of the fact of a previous application for insurance. Further, he told W. E. Hawkins, the general state agent of the defendant company, that one doctor had stated to him that he had heart trouble (Record, page 126). He also stated to Hawkins that he had made applications to other insurance companies (Record, page 127). He further stated to Dr. Harrold that one of the doctors had told him that he had heart trouble. Dr. Harrold was the medical examiner for the defendant company. There was no concealment of this fact. The company was put on notice (Record, page 130). The testimony of John T. Moore shows conclusively that Salgue told the agents of the Aetna Life Insurance Company that he had other applications,

and that Dr. Little had stated that he had heart trouble (Record, page 156). All of these facts were made known to the agents of the defendant company. Surely it cannot be said that there was any fraudulent concealment as to these questions by the insured. This being true, the policy will not be void.

> Ley *v.* Metropolitan Life Ins. Co. 120 Ia., 203,
> Patten *v.* U. S. Life Ins. Co. 141 N. Y., 589,
> Vol. 25 Cyc. of Law & Procedure, 796.

The question in which the defendant company claims the court committed error in failing to direct a verdict on the ground that Salgue made a false answer to, is whether or not he had been rejected by any other insurance company. From the record, this Honorable Court will see that the Penn Mutual Life Insurance Company did not reject Salgue, but to the contrary, the agent of the Penn Mutual Life Insurance Company, Anderson Clark, told Salgue that upon payment of the doctor's fee, the application would be withdrawn, and that there would be no rejection by the company (Record, page 57).

We respectfully submit that the refusal of the Court to direct a verdict holding that this answer of Salgue was untrue as a matter of law, cannot be successfully sustained, because in point of fact it was a question for the jury to say whether or not he was rejected by the Penn Mutual Life Insurance Company, and the Court very properly submitted that issue to the jury for their determination.

THIRD.

The Refusal of the Trial Judge to Charge the Jury as Requested.

Exceptions were made to the refusal of the Court to give certain instructions, one of which is as follows:

> "When applicant for life insurance covenants in his application that the statements made to the medical examiner are true, and these statements are made a part of the contract of insurance and form

> the basis of such contract, any variation in any of them, which is material, whereby the nature or extent of character of the risk is changed will void the policy, whether the statement was made in good faith or wilfully or fraudulently."

We respectfully contend that the refusal of the Court to give these instructions was eminently proper.

The Supreme Court of the State of Georgia has ruled upon this distinct proposition of law, basing it upon Section 2481 of the Civil Code of Georgia, Vol. I, 1890, which has been previously cited.

> "A warranty as to the honest belief of the assured, based upon his knowledge and hence the falsity of the answer will not defeat recovery on the policy unless such falsity was known, or reasonably could have been known, to the assured.
>
> O'Connell *v.* Supreme Conclave K. of D., 102 Ga. 143.

The same question has been adjudicated by the United States Court:

> "While it is stated that answers in the application which are expressly made warranties must be strictly and literally true or the policy will be voided; still the general rule is that substantial truth in representations is all that is required."
>
> Farrell *v.* Security Mutual Life Ins. Co. 125 Fed., 684.

Exceptions are taken on the ground that the Court refused to give the following instructions:

> "Whenever an applicant for life insurance makes material representation in his application for examination and covenants that they are true and the representations are made the basis of the contract of insurance, such contract is void if the representations vary from the truth in such a manner as to change the nature, extent or character of the risk. This is true, although the applicant may have made the representations in good faith, not knowing that they were untrue."

We respectfully submit that the Court committed no error in refusing to give the above instructions to the jury, for the reason that the representations made by the deceased were contended for by the plaintiff as true, and evidence was introduced to prove the truth of said representations and warranties. The testimony of Dr. W. R. Winchester (Record, page 51), Dr. Harrold (Record, page 129), Dr. Barron (Record, page 141), evidence of Dr. Goston (Record, page 146), all of whom testified that Salgue did not have heart trouble, and the evidence of Dr. Gostin, who was the last physician in attendance on the deceased, stated positively that his death was not occasioned by heart trouble, but from an aneurism.

We, therefore, respectfully contend that there was a conflict as to the truth of the representations, and under the Georgia authorities, this was a jury question, and the Court very properly refused the request and submitted the issue to the jury.

> Supreme Conclave K. of D. *v.* Wood, 120 Ga., 337, 338.

The refusal of the Court to charge the jury on the following request was assigned as error:

> "Now, I charge you that if Salgue, by a written answer in his application to a question as to whether he had heart disease answered "No," such answer being warranted and covenanted to be true in his application, he is bound by his covenant without regard to his good faith in making the representations, and if such statement made as to his not having heart disease was untrue, then the policy issued to him by the Aetna Life Insurance Company would be void."

We respectfully submit that the refusal of the Court to give this charge was not error on two grounds:

1st. That the plaintiff contends that the representations and warranties made by Salgue that he did not have heart trouble were true, and that this was a question of fact for the jury to deside.

2nd. That the insurance company is estopped from denying that this answer was not the truth, for in point of fact the testimony of Ray (Record, page 121), testimony of Hawkins (Record, page 126), testimony of Dr. Harrold (Record, page 130), all of whom were the agents of the company, shows conclusively that they were put in full possession of the fact of Salgue's physicial condition, and the questions and answers, both of the agent and of the medical examiner, were prepared and filled in by each individual, and this was done after each of them had been put in full possession of the facts. Therefore, as above stated, the insurance company is estopped from denying the truth of these answers, as the agents who solicited the insurance and the medical examiner for the company, who examined the deceased, acted as the agents of the insurance company and the insurance company is bound thereby.

> "When agents prepare the application of the insured, or make any representation to him as to the character or effect of the statements of the application, they will be regarded in so doing, as the agents of the insurance company, and not of the insured."
>
> Union Mut. L. Ins. Co. *v.* Wilkinson, 13 Wall., 222,
> American Life Ins. Co. *v.* Mahone, 21 Wall., 152,
> New Jersey Mut. L. Ins. Co. *v.* Baker, 94 U. S., 610.

> "Where soliciting and forwarding applications for policies of insurance was within the scope of the duties of an agent of an insurance company, and such agent undertook to prepare for another an application for insurance, and wilfully inserted therein a false answer to a material question, he will be regarded in so doing as the agent of the company and not of the applicant, and the agent's knowledge of the falsity of the answer will be imputed to the company."

Clubb *v.* The American Accident Co., of Louisville, Ky., 97 Ga. 502.

> "Although, in such case, the application was, by its terms, a part of the contract of insurance, and was signed by the person to whom the policy was subsequently issued, if the latter was fraudulently misled and deceived by the agent as to the contents

of the application in the respects indicated, and was in fact ignorant that it contained the false answer in question, the company will not be allowed to avoid the policy on the ground of a false warranty in relation to that answer."

Clubb *v.* The American Accident Co., of Louisville, Ky., 97 Ga. 502.

"When the insurance company delegates to an agent the authority to take insurance, and to negotiate for the company in making its contracts of insurance, it likewise impresses him with all of the responsibilities which the law will attach to a person in his situation, and he is the agent of the company."

German-American L. Ins. Co. *v.* Farley, 102 Ga. 735.

"Where in a written application for insurance, which is prepared by the agent of the company who solicits the insurance and delivers the policy, the applicant makes certain statements as to his physical condition, as to the general state of his health, and as to his rejection by other insurers to whom he has previously applied for insurance, which statements are warranted by him to be true, and which if false, might materially affect the risk, a policy of insurance which recites that it is issued in consideration of such statements and of certain other valuable considerations therein expressed, but which does not in terms provide that it shall be void in the event such statements of fact should prove to be untrue, is not avoided as a consequence of the mere falsity of any of such statements, where it appears that even if they were false, they were not fraudulently made, and that the fact that they were false was known to the agent of the insurer, who had himself prepared the application and procured the applicant to sign it."

German American Mut. L. Ins. Co. *v.* Farley, 102 Ga., 720.

"When the law of the state provides that a person who solicits or procures applications for insurance shall be held to be the agent of the insurance company, and such agent fills up the application, his act in doing so is the act of the company."

Continental L. Ins. Co. *v.* Chamberlain, 132 U. S., 304.

"Agent soliciting insurance is the agent of the Company."

Clubb *v.* American Accident Co., 97 Ga., 502.

"Where written proposals for insurance are prepared by the insurer's agent, both questions and answers must be regarded as the act of the insurer, especially where true answers were in fact made by the applicant and the agent substituted others for them, thus misrepresenting the applicant as well as deceiving his own principals."

American I. Ins. Co. v. Mahone, 21 Wall., 152.

"Where the insurer's agent prepares the applications for insurance, the insurer is not relieved from responsibility for the acts of the agent by reason of the fact that the answers as written by the agent were subsequently read to the applicant and signed by him."

American L. Ins. Co. *v.* Mahone, 21 Wall., 152.

"Knowledge by one employed as a solicitor of fire insurance, who delivered the policy of insurance to the insured and received the premiums, of material facts relative to the state of the title and the use to which the property was put at the time of the issuance of the policy, is imputable to the company. This will estop the company from setting up a defense based upon a provision in the policy that it should be void if the interest of the insured be "other than unconditional and sole ownership."

Springfield Firs Ins. Co. *v.* Price, 132 Ga., 687,
Johnson *v.* Aetna Ins. Co., 123 Ga., 404,
Mechanics Ins. Co. *v.* Mutual Bldg. Assn., 98 Ga., 262.

"Restrictions inserted in the contract upon the power of the agent to waive any condition, unless done in a particular manner, do not apply to those conditions which relate to the inception of the contract, where it appears that the agent has delivered it, and received the premiums, with full knowledge of the actual situation."

Wood *v.* American Fire Ins. Co., 149 N. Y., 382.

Exception to the refusal of the Court to give the following instructions to the jury was not error:

> "The insured, Salgue, in answer to a question asking for the names and residences of all of the physicians whom he had personally employed or consulted during the five years next preceding July 8, 1905, answered, 'Dr. Jas. T. Ross, Macon, Ga.' Now, if you believe from the evidence that the insured had as a matter of fact, either personally employed or consulted Dr. W. J. Little, Dr. J. C. McAfee and Dr. W. R. Winchester, in addition to Dr. Ross, and within a few days prior to July 8, 1905, I charge you that this would be a material misrepresentation, because such answer withheld from the Aetna Insurance Company very important sources of information which it was entitled to have in response to said question."

We respectfully submit that the information, as requested, was given to the agents, both soliciting, general agent and the medical examiner of the Aetna Life Insurance Company, of the fact that he had consulted one or two physicians, and that the insured did not deem it necessary or material to give the names of all the physicians he had consulted. The answer may have been incomplete, but the agents of the company knew that he had consulted at least two other physicians, and they did not deem it necessary to insert this fact to the answer. Therefore, the action of the insurance company's agent, which led Salgue to believe that it was unnecessary to give the names of all the physicians whom he had consulted, was such action as to estop the company from insisting upon a forfeiture for the failure to so state.

> "Any agreement, declaration or course of action on the part of the insurance company which leads the party insured to believe that by conforming thereto a forfeiture of his policy will not be incurred, will estop the company from insisting upon the forfeiture."
>
> Phoenix Mut. L. Ins. Co. *v.* Doster, 106 U. S., 30.
> Hartford Life & Annuity Ins. Co. *v.* Unsell, 144 U. S., 439.
> N. Y. Life Ins. Co. *v.* Eggleston, 96 U. S., 572.

If the answer was not complete, or imperfectly answered, the issuance of the policy without further inquiry, especially when the insurance company had been put on notice, as in the case at bar, amounts to a waiver of the objection, and makes the omission immaterial.

> "The issuance of a life insurance policy without further inquiry as to a question imperfectly answered, or not answered at all in the application, is a waiver of objection thereto, making the omission immaterial."
>
> Phoenix Mut. L. Ins. Co. *v.* Raddin, 120 U. S., 183.

We respectfully contend that it was not necessary for Salgue, in answer to the question, to state the names of physicians he consulted for merely slight or temporary indispositions.

> "In analogy with the rule as to disclosure of temporary or slight ailments, it is held that medical consultation or attendance for merely slight or temporary indisposition need not be disclosed, the insured being entitled to a liberal construction of the language of the application."
>
> McLain *v.* Provident L. I. Co., 110 Fed., 80.
> Hubbard *v.* Mutual Reserve Fund L. I. Co., 100. Fed. Rep., 719.

We further respectfully contend that this particular question is not a warranty, but is a representation. The courts on similar questions have construed that they were representations rather than warranties.

> "Questions and answers as to whether or not insured had ever had certain specified diseases, or any other serious ailment, held representations though called warranty."
>
> Minn. Mut. L. I. Co. *v.* Lee, 230 Ill., 273.

Refusal of the Court to give the following request was not error:

> "Has any proposal or application to insure your life been made to any company, association or agent on

which a policy of insurance is now pending? Or has any such proposal or application ever been made for which insurance has not been granted or on which a policy or certificate of insurance was not issued for the full amount and of the same kind as applied for? If so, state particulars, and the names of all such companies, associations or agents.

"To this question, he answered, 'None.'

"Now, I charge you that if you believe from the evidence there were pending at that time applications for insurance in other companies, associations or agents, or that an application had been previously made by the insured to the Penn Mutual Company, upon which insurance had not been granted, then this reply upon the part of the insured would be a material misrepresentation of fact, whether such answer was made in good faith or not, and under the terms of the application signed by the insured, such answer would render said policy void."

We respectfully contend that this assignment of error is not meritorious for two reasons:

1st. That whether or not the statements made in the application are material to the risk is a question for the jury and not a question of law for the court.

We respectfully contend that the refusal of the trial court to give these instructions was not error for the following reasons:

The testimony of Anderson Clark (Record, page 58), is to the effect that he told Salgue that if he would pay the medical examiner's fee that his application would not be considered a rejection. Therefore, Salgue certainly had a right to believe that the withdrawal of his application by the consent and even at the suggestion of Anderson Clark, the agent of the Penn Mutual Life Insurance Company, that this could not be considered a rejection by the company, and in point of fact, the Penn Mutual Insurance Company did not reject Salgue, but the application was withdrawn. Besides, whether or not the rejection was made by the Penn Mutual was a jury question and not a question of law for the Court to decide.

Another exception is to the refusal of the Court to give the following instructions to the jury:

> "The insured, Salgue, was asked the following question:
>
> "'Has any physician expressed an unfavorable opinion upon your life with reference to life insurance? If so, state particulars.'
>
> "To this question he answered, 'No.'
>
> "Now if you believe from the evidence that within a few weeks prior to July 8, 1895, the date of his application to the Aetna Company, Salgue, the insured, was examined by Dr. Wm. Little, as the medical examiner for the Penn Mutual Insurance Company, who told Salgue in substance that his heart was in such condition that he could not recommend him for life insurance, advising him to see his own doctor about his heart, and that on the same day, Dr. J. C. McAfee, to whom Salgue had been referred by Dr. Little, examined Salgue and expressed a like unfavorable opinion as to the condition of Salgue's heart, and made such opinion known to Salgue, then I charge you that under the terms of said application and Salgue's warranty therein, said policy would be void and Salgue's administrator would not be entitled to recover against the Aetna Life Insurance Company, because if such are the facts, Salgue's answer would be untrue, and be a material misrepresentation and void the policy."

We respectfully submit that the answer to the above question by the insured was correct, and was a question of fact for the jury to decide, and further that the agents of the company were put in full possession of the facts as to his application in the Penn Mutual, as well as what Dr. Little had said about the condition of his heart, and, therefore, the insurance company was estopped from setting up this avoidance of the policy.

We respectfully contend that from the evidence of John T. Moore (Record, page 154), Jordan Massee (Record, page 163), two of the employers of Salgue, and the evidence of E. L. Reeves (Record, page 166), the next door neighbor of Salgue, and the evidence of Mrs. John A. Salgue (Record, page 166), it is conclusively shown that Salgue answered

the question that he was in sound health correctly. The evidence of these witnesses was to the effect that Salgue was a man of robust health and had not been sick from any serious illness in the last four years. Therefore, Salgue knew that he was a man in sound health, and the question as answered was correct.

We respectfully submit further that the Court committed no error in failing to charge the request for the further reason that the soliciting agent, the state agent and the medical examiner of the insurance company, were put in full possession of the facts as to whether or not any physician had expressed an unfavorable opinion upon his life, and if the insured had been mislead through the fraud of the company's agent in making this statement or representation, surely it cannot be said that the company can use such fraud to defeat the contract of insurance.

> "Misstatements by way or representations or warranty, which are made through fraud of the company's agent, cannot be relied on by it to defeat the policy, and especially is this so where the insured is misled by the agent into making the false statements."
>
> Standard Life I. Co. *v.* Frazier, 76 Fed., 705.
> Ency. of Law and Procedure, 25 Vol., 803.

> "Statements in the application in handwriting of medical examiner of the insurance company will be taken most strongly against the company."
>
> Globe M. L. I. Co. *v.* Myer, 118 Ill. Appeal, 155.

In conclusion, taking all the exceptions of the plaintiff in error, we respectfully contend that the question narrows itself down as to whether or not the alleged falsities of the answers of the insured would void the policy, should be submitted as a question of fact for the jury, in order to determine whether or not the answers were made bona fide by the applicant.

We respectfully submit that the statements made in the application by the insured are not warranties, but are mere representations, and the insured was only required to

observe the utmost good faith in answering the questions in the application.

In the case of Moular *v.* American Life Ins. Co., Ill. U. S., 335, the warranty was as follows:

> "It is hereby declared and warranted that the above are fair and true answers to the foregoing questions; and it is acknowledged and agreed by the undersigned that this application shall form part of the contract of insurance, and that if there be, in any of the answers herein made, any untrue or evasive statements, or any misrepresentations or concealment of facts, then any policy granted upon this application shall be null and void, and all payments made thereon shall be forfeited to the company.
>
> "And it is further agreed that if at any time hereafter the company shall discover that any of said answers or statements are untrue or evasive, or that there has been any concealment of facts, then, and in every case, the company may refuse to receive further premiums on any policy so granted upon this application, and said policy shall be null and void and payments forfeited as aforesaid."

Comparing the foregoing with the warranty in the present case, it will be seen that the language there used is much stronger. Notwithstanding this, Mr. Justice Harlan in construing that policy, in the opinion of the Court, held that the statements in the application were mere representations and that the applicant was only required to observe the utmost good faith in answering the questions in the application.

The Circuit Court of Appeals for the Fifth District has ruled, in construing a Georgia contract in the case of Fidelity Mutual Life Assn. *v.* Jeffords, 107 Fed., 402, that the statements made in the application, although false, would not avoid the policy if made in good faith.

It has been repeatedly held and sustained by the great weight of authorities that all policies of insurance and applications must be construed against the insurer and in favor of the insured; that all statements in the application will be construed as representations rather than warranties.

Havan *v.* Scottish Union and Natl. Ins. Co. 186 U. S., 423.
Phoenix Mut. Lif. Ins. Co. *v.* Raddin, 120 U. S., 183.
Home Life Ins. Co. *v.* Fisher, 188 U. S., 726.
First Natl. Bank *v.* Hartford Fire Ins. Co., 195 U. S., 673.
Franklin Fire Ins. Co. *v.* Vaughn, 92 U. S., 516.
Mutual Benefit Life Ins. Co. *v.* Higginbotham, 95 U. S., 380.
Knickerbocker Life Ins. Co. *v.* Trefz, 104 U. S., 197.
Vol. 25 Cyc. 796 to 815.
Penn Mut. Life Ins. Co. *v.* Mechanics' Savings Bank & Trust Co., 72 Fed., 413.

Therefore, we respectfully contend from the authorities above cited that all that is required of the insured in his application for life insurance is for him to act in perfect good faith with the company, and applying such rule to the evidence in the case at bar, this Honorable Court will agree with the trial court that the issue was properly submitted to the jury to settle the question of fact.

The insurance company alleged gross fraud. The insurance company alleged that Salgue knew that his condition was such that he would be a poor risk to insurance companies, and with this knowledge, set out purposely to procure a large amount of insurance, but the evidence in the record shows to the contrary. Instead of trying to load up on life insurance for the purpose of defrauding various companies, the insured did exactly the opposite. The record shows that the Provident Life Insurance Company had sent out a number of policies. This company had accepted the risk. These contracts were refused by Salgue. The Sun Life Insurance Co. policy, Salgue refused to accept for some months after the policy had been issued. The Prudential Insurance Company's policy was only accepted after the employer had agreed to advance Salgue the money to pay the premium.

The defendant company by its agents practiced a fraud upon Salgue by obtaining from him a note for the payment of the premium of the policy, when in point of fact he thought that he was only signing an application, and that he did not know that he had signed a note for the premium

until the same was presented, and that as a matter of law, he had to accept the contract on account of the fact that he had obligated for the payment of the same.

Therefore, the proposition that Salgue entered into a scheme to defraud the insurance companies of large amounts of money falls of its own weight. The very policy that is in dispute now before this Honorable Court was forced upon him over his objection. (See Record, page 157.)

Where a question of fraud is raised in the trial of similar issues, as in the case at bar, and the attack is made directly upon the character of the deceased insured, the good character alone, according to the authority of the Supreme Court of Georgia, is sufficient, where there is a disputed issue of fact, to allow the jury to settle such questions.

From the testimony of a number of witnesses, as shown by the record, the character of the deceased was above reproach, and when the insurance company attempted by the defenses interposed to attack the character of the deceased, and the proof of his character being undisputed, this would be a substantial plea for the trial court to permit the jury to settle the disputed facts in the case.

German-American Mutual Life Ins. Co. *v.* Farley, 102 Ga., 720.

In conclusion, we respectfully contend that from a careful reading of the charge of the trial court, it will be readily seen that the same was fair, and submitted the propositions of law correctly, with proper instructions to the jury. Undoubtedly there were questions of disputed fact, which it was the duty of the jury to settle, and the trial court correctly instructed the jury as to their duty; and we respectfully submit that the verdict as affirmed by the Circuit Court of Appeals should be affirmed by this Honorable Court.

Respectfully submitted,

MINTER WIMBERLY,
ALEXANDER AKERMAN,
JESSE HARRIS,
Of Counsel for Respondent.

P. O. Macon, Ga.

of the medical adviser, and with the knowledge that the company to whom the application was made was about to reject it.

Applicants for insurance are competent to make agreements in the policy that no person other than the executive officers of the company can vary its terms, and such an agreement is binding when made.

A decision of the highest court of a State on a principle of general jurisprudence is not controlling upon this court. *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349.

Where two cases are consolidated by the court below because it appears reasonable to do so under § 921, Rev. Stat., and this court doubts the reasonableness of the consolidation, it need not pass upon that subject definitely if, as in this case, a new trial is ordered on other grounds.

THE facts, which involve the validity of a verdict and judgment on a policy of life insurance, are stated in the opinion.

Mr. A. L. Miller, with whom *Mr. M. D. Jones*, *Mr. George S. Jones*, *Mr. Walter Defore*, *Mr. Wallace Miller* and *Mr. Charles H. Hall, Jr.*, were on the brief, for petitioner.

Mr. Jesse Harris and *Mr. Minter Wimberly*, with whom *Mr. Alexander Akerman* was on the brief, for respondent:

Consolidating the causes was a proper exercise of the discretion of the trial court under § 921, Rev. Stat. *Mutual Life Ins. Co.* v. *Hillman*, 145 U. S. 285.

There was no error in the failure and refusal of the court to direct a verdict in favor of the insurance company.

While the policy is a Georgia contract, and the law of Georgia will, therefore, be applied in construing and considering the contract, the construction of the Georgia law will be taken in connection with the law as construed by the courts of the United States relating to contracts of life insurance. For the statute law of Georgia applicable to the case, see 1 Code of Georgia of 1910, §§ 2479–2482, and § 2499.

The evidence for both the plaintiff and the defendant in the court below clearly establishes the fact that there was no fraudulent concealment of any material fact and no wilful concealment of any fact that would enhance the risk.

All material facts were made known to the agents of the defendant company. It cannot be said that there was any fraudulent concealment as to these questions by the insured. This being true, the policy will not be voided. *Ley* v. *Metropolitan Life Ins. Co.*, 120 Iowa, 203; *Patten* v. *U. S. Life Ins. Co.*, 141 N. Y. 589; Vol. 25, Cyc. of Law & Procedure, 796.

The refusal of the court to give the instructions requested by plaintiff in error was proper. *O'Connell* v. *Supreme Conclave*, 102 Georgia, 143; *Farrell* v. *Security Life Ins. Co.*, 125 Fed. Rep. 684.

The refusal of the court to so charge was not error because the representations and warranties made by the applicant that he did not have heart trouble were true, and this was a question of fact for the jury to decide.

The insurance company is estopped from alleging that this answer was not the truth, as the agents who solicited the insurance and the medical examiner for the company, who examined the deceased, acted as the agents of the insurance company and the insurance company is bound thereby. *Union Mut. Ins. Co.* v. *Wilkinson*, 13 Wall. 222; *American Life Ins. Co.* v. *Mahone*, 21 Wall. 152; *New Jersey Mut. Ins. Co.* v. *Baker*, 94 U. S. 610; *Clubb* v. *American Accident Co.*, 97 Georgia, 502; *German-American Ins. Co.* v. *Farley*, 102 Georgia, 735; *Continental Ins. Co.* v. *Chamberlain*, 132 U. S. 304; *Springfield Fire Ins. Co.* v. *Price*, 132 Georgia, 687; *Johnson* v. *Aetna Ins. Co.*, 123 Georgia, 404; *Mechanics Ins. Co.* v. *Mutual Bldg. Assn.*, 98 Georgia, 262; *Wood* v. *American Fire Ins. Co.*, 149 N. Y. 382.

The answer given by the applicant may have been in-

complete, but the agents of the company knew that he had consulted at least two other physicians, and they did not deem it necessary to insert this fact in the answer. Therefore, the action of the insurance company's agent, which led the applicant to believe that it was unnecessary to give the names of all the physicians whom he had consulted, was such action as to estop the company from insisting upon a forfeiture for the failure to so state. *Phœnix Mut. Ins. Co.* v. *Doster*, 106 U. S. 30; *Hartford Life Ins. Co.* v. *Unsell*, 144 U. S. 439; *N. Y. Life Ins. Co.* v. *Eggleston*, 96 U. S. 572.

If the answer was not complete, or imperfectly answered, the issuance of the policy without further inquiry, especially when the insurance company had been put on notice, as in the case at bar, amounts to a waiver of the objection, and makes the omission immaterial. *Phœnix Mut. Ins. Co.* v. *Raddin*, 120 U. S. 183.

It was not necessary for the applicant, in answer to the question, to state the names of physicians he consulted for merely slight or temporary indispositions. *McLain* v. *Provident Ins. Co.*, 110 Fed. Rep. 80; *Hubbard* v. *Mutual Reserve Fund*, 100 Fed. Rep. 719.

This particular question is not a warranty, but is a representation. *Minn. Mut. Ins. Co.* v. *Lee*, 230 Illinois, 273.

Whether or not the statements made in the application are material to the risk is a question for the jury and not a question of law for the court.

Misstatements by way or representations of warranty, which are made through fraud of the company's agent, cannot be relied on by it to defeat the policy, and especially is this so where the insured is misled by the agent into making the false statements. *Standard Life Ins. Co.* v. *Frazier*, 76 Fed. Rep. 705; 25 Ency. of Law and Procedure, 803; *Globe Mut. Ins. Co.* v. *Myer*, 118 Ill. App. 155.

Whether or not the alleged falsities of the answers of

the insured would void the policy, should be submitted as a question of fact for the jury, in order to determine whether or not the answers were made *bona fide* by the applicant. *Moulor* v. *Am. Life Ins. Co.*, 111 U. S. 335; *Fidelity Mut. Life Assn.* v. *Jeffords*, 107 Fed. Rep. 402.

All policies of insurance and applications must be construed against the insurer and in favor of the insured, and all statements in the application will be construed as representations rather than warranties. *Havan* v. *Scottish Union Ins. Co.*, 186 U. S. 423; *Phœnix Mut. Life Ins. Co.* v. *Raddin*, 120 U. S. 183; *Home Life Ins. Co.* v. *Fisher*, 188 U. S. 726; *First Natl. Bank* v. *Hartford Ins. Co.*, 195 U. S. 673; *Franklin Fire Ins. Co.* v. *Vaughn*, 92 U. S. 516; *Mutual Benefit Life Ins. Co.* v. *Higginbotham*, 95 U. S. 380; *Knickerbocker Life Ins. Co.* v. *Trefz*, 104 U. S. 197; 25 Cyc. 796, 815; *Penn. Mut. Life Ins. Co.* v. *Mechanics' Savings Bank*, 72 Fed. Rep. 413.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Action on a life insurance policy for $6,000 issued upon the life of John A. Salgue, the intestate of respondent. It was tried to a jury, resulting in a verdict and judgment for respondent. The judgment was affirmed on writ of error to the Circuit Court of Appeals by a *per curiam* opinion. This certiorari was then granted.

The questions in the case are based on certain statements made by Salgue which, it is contended by petitioner (herein called the insurance company), became a part of the policy and constituted warranties.

The following are the material provisions of the policy and the application:

"This policy of insurance witnesseth: That the Aetna Life Insurance Company, in consideration of the statements, answers and warranties contained in or endorsed

AETNA LIFE INSURANCE COMPANY *v.* MOORE, ADMINISTRATOR OF SALGUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 33. Argued November 3, 1913.—Decided December 22, 1913.

The character of the covenants of a contract for life insurance depends upon the law of the State where made. The Code of Georgia expressly provides that the application must be made in good faith and that the representations are covenanted by the applicant as true, and any variations changing the character of the risk will void the policy.

The law of Georgia as determined by its highest court, prior to the adoption of the Code, was that insurer and insured may make their own contract and determine what representations are material.

The highest court of Georgia has decided that mere immaterial matters, although declared to be warranties, do not void a policy even though the policy declares them to be such, and that under the Code the parties themselves could not contract to make immaterial matter material.

In order for an insurance company, defending on the ground of false statements in the application, to have a verdict directed, it must establish that the representations were material to the risk and were untrue.

A representation that the applicant for insurance has never been rejected by any company, association or agents is material to the risk and is not true if he has withdrawn an application at the suggestion

upon the application for this policy, which application is copied hereon and made a part of this contract, and in further consideration of the annual premium . . . hereby insures the life of John A. Salgue. . . .

"This policy is issued and accepted subject to the conditions, provisions and benefits printed on the reverse of this page, which are hereby referred to and made a part hereof. . . .

"Conditions, provisions and benefits which are made a part of this policy:

"Section 1. This policy shall not take effect until the first premium hereon shall have been actually paid during the lifetime and good health of the insured. . . .

"Section 7. All agreements made by said company are signed by one of its executive officers. No agent or other person not an executive officer can alter or waive any of the conditions of this policy, or make any agreement binding upon said company."

Copy of the application:

"Being desirous of insuring my life with the Aetna Life Insurance Company, I do hereby declare and warrant that I am in good health, of sound body and mind, and that the following statements signed by me are full, correct and true; and that I have no knowledge or information of any disease, infirmity or circumstance not stated in this application which may render insurance on my life more hazardous than if such disease, infirmity or circumstance had never existed; and I do hereby agree that the declarations and warranties herein made, and the answers to the following questions, together with those signed by me on the second page of this application, shall be the basis and form part of the contract (or policy) between me and the said company, and that if the same be in any respect untrue, said policy shall be void; and I further agree that the insurance hereby applied for shall not be binding upon said company until a policy has been issued, nor until

the amount of premium as stated therein has been received by said company, or its authorized agent, during my lifetime and good health, and a receipt given therefor, signed by an executive officer of said company; and I further agree that no statement or declaration made to any agent, examiner or any other person, and not contained in this application, shall be taken or considered as having been made to or brought to the notice or knowledge of said company, or as charging it with any liability by reason thereof; and I understand that all policies and agreements made by the said Aetna Life Insurance Company are signed by one or more of its executive officers, and that no other person can grant insurance or make any agreement binding upon said Company."

The application also contained questions addressed to the insured by the examining physician and the answers by him, among others, as follows:

"14. What are the names and residences of all the physicians whom you have personally employed or consulted during the last five years?"

Answer: "Dr. James T. Ross, Macon, Ga."

"16. Has any proposal or application to insure your life been made to any company, association or agent on which a policy of insurance is now pending? Or has any such proposal or application ever been made for which insurance has not been granted, or on which a policy or certificate of insurance was not issued in full amount, and of the same kind as applied for? If so, state particulars and the names of all such companies, associations or agents."

Answer: "None."

"19. Has any physician expressed an unfavorable opinion upon your life with reference to life insurance?"

Answer: "No."

"21. Have you ever had any of the following diseases? Answer 'yes' or 'no' opposite each. If 'yes,' state the

date, duration and severity of illness. . . . Disease of the heart?" . . .

Answer: "No."

"23. Are you subject to dyspepsia, dysentery or diarrhœa?" Answer: "No."

"24. Have you had during the last seven years any disease or severe sickness? If so, state the particulars of each case and the names of the attending physicians."

Answer: "No."

There was discussion between Salgue and the examining physician in regard to the condition of Salgue's heart. His first statement was that he did not have heart disease, though he had been told he had. The physician explained to him the symptoms of the disease, and he replied that he did not have any of them and never had been treated for heart trouble. He had, he further said, consulted two doctors, Little and Winchester, and one of them told him he had heart disease "and scared him so." The other told him that he did not have any signs of it. And the recollection of the physician was that Salgue referred to Dr. Ross as having treated him for something several years previously. At the end of the discussion the physician put down the answer "No." He also reported that Salgue's respiration was "full, easy and free. O. K." and that "auscultation" did not "indicate enlargement or disease of the heart of any kind."

There was testimony to the effect that about June 15, 1905, and prior to the application to the Aetna, Salgue applied to the local agent of the Penn Mutual Insurance Company at Macon for a policy of $6,000. The company's medical examiner refused to pass him, telling him that he had heart disease and advising him to see his family physician, Dr. McAfee. Salgue consulted Dr. McAfee and was informed by him that he had heart disease.

The contentions of the insurance company are based (1) upon a request for the direction of a verdict in its

favor; (2) the denial of requests for special instructions. We may confine our consideration to the special requests.

There was controversy as to whether Salgue had heart disease. We have seen the various opinions of the examining physicians. Salgue was a strong man physically and his strength was illustrated by instances. At one of his examinations he easily picked up and removed a large box of melons without any effect on his heart action. An effort of strength on another occasion was immediately detrimental, causing an aneurism which progressively developed and produced a rupture of the blood vessel and his death. By the advice of his physician he had quit work and had gone to a resort called Indian Springs. He remained there about ten days and on his way home died suddenly on the cars.

It is not necessary to give at length the charges requested. They embrace the propositions (1) that the application and its statements, warranties and covenants became part of the contract of insurance, and that any variation from them whereby the nature, extent or character of the risk was changed, would affect the policy whether the statement was made by the applicant in good faith, not knowing they were untrue, or made wilfully or fraudulently. And so also as to the answers to the questions put to Salgue as to his health, freedom from heart disease, the physicians he had consulted, the applications for insurance which he had made which were rejected or not accepted. (2) Under the terms of the policy the application constituted part of it, the answers to the questions were covenanted and warranted and Salgue was bound thereby without regard to his good faith in making them; or that they were representations material to the risk by which he was bound without regard to his good faith, and that therefore the answers, if untrue, would make the policy void. (3) The provisions of the policy that no statement or declaration made to an agent, exam-

iner or any other person, and not contained in the application, shall be taken or construed as having been made to or brought to the knowledge of the company, or as charging it with any liability by reason thereof, was binding on Salgue. So also the limitations on the powers of the agents and of what may have been said to them or by them. And further that if the answers in the application were incorrect it was Salgue's duty to report them as incorrect to the company, and, failing to do so, he was presumed to have accepted his policy upon the faith of them. It was, therefore, immaterial what may have been said by or to the agent or to the medical examiner which was not reduced to writing and presented to the officers of the company at the home office.

The charge of the court was very long—too long even to attempt to condense. It was antithetical to the special requests made by the insurance company. Applying certain general principles which it expressed, the court said:

"To make them distinctly applicable to your duty, you are instructed that you must determine from all the facts, first, did Salgue make a misrepresentation or concealment of a fact of which he had knowledge. If he did not, the defense on this point must fail. Second, if he did, was such misrepresentation or concealment so material that it would have influenced one or both of the defendants not to issue the policy of insurance upon the respective applications. And third, in connection with this your inquiry will be, if such material misrepresentation or concealment as would have caused the defendants or either of them to withhold insurance was made, was it by Salgue wilfully or fraudulently done. In the absence of wilful or fraudulent misrepresentation or concealment of a material fact the policy stands good and the insurance company must pay what it promised to pay by its policy, when it accepted the premium of the applicant."

We may note here that Salgue declared in his applica-

tion that he was "in good health"; that the statements made by him were "full, correct and true"; and that he had no knowledge of "any disease, infirmity or circumstance" which might "render insurance on his life more hazardous than if such disease, infirmity or circumstance had never existed." He also agreed that "the declarations and warranties" therein made, and the answers to the questions "should be the basis and form part of the contract (or policy)" between him and the company, "and that if the same be in any respect untrue" the policy should be "void."

The policy is conceded to be a Georgia contract. The character of its covenants, therefore, depends upon the law of that State declared in § 2479 of its Code, as follows:

"Application, Good Faith. Every application for insurance must be made in the utmost good faith, and the representations contained in such application are considered as covenanted to be true by the applicant. Any variation by which the nature, or extent, or character of the risk is changed will void the policy." [1]

But who is to decide—the court or jury—whether a variation be of the quality described? We have seen

[1] SEC. 2480. Effect of misrepresentation. Any verbal or written representations of facts by the assured to induce the acceptance of the risk, if material, must be true, or the policy is void. If, however, the party has no knowledge, but states on the representation of others, *bona fide*, and so informs the insurer, the falsity of the information does not void the policy.

SEC. 2481. Concealment. A failure to state a material fact, if not done fraudulently, does not void; but the wilful concealment of such a fact, which would enhance the risk, will void the policy.

SEC. 2483. Wilful misrepresentation voids policy. Wilful misrepresentation by the assured, or his agent, as to the interest of the assured, or as to other insurance, or as to any other material inquiry made, will void the policy.

SEC. 2499. Law of fire insurance applicable. The principles before stated as to fire insurance, wherever applicable, are equally the law of life insurance.

how explicit the policy is, and this court in *Jeffries* v. *Economical Life Insurance Company*, 22 Wall. 47, and *Aetna Life Insurance Company* v. *France*, 91 U. S. 510, held that the parties to the contract may make the inquiries and answers material and that therefore their materiality is not open to be tried by a jury.

These cases recognize the right of the insurer and the insured to make their own contract and determine for themselves what representations shall be material.

How far has this simple rule and the right of the parties been changed by the Georgia Code? In *German-American Life Association* v. *Farley*, 102 Georgia, 720, 733, it was decided to be the established law of that State that mere immaterial matters, though incorporated in an application for insurance and declared to be warranties, do not avoid the policy, and that this was so imperatively the law of the State under the provisions of the Code that the parties could not contract to make immaterial matter material. The court, however, said: "Of course, what is in any degree material should be allowed its due effect; but the absolutely immaterial should count for nothing."

In *Supreme Conclave* v. *Wood*, 120 Georgia, 328, the Code again came up for construction and the statements of the insured were declared to be representations, not warranties, and that it was the purpose of the Code to get away from what the court denominated the "finer distinctions and strained constructions" of the cases. It was therefore held that under the Code of the State "a policy cannot now be avoided upon the ground of the falsity of a representation, though warranted, unless that representation be material and the variations from truth be such as to change the nature, extent, or character of the risk." But the court further held that if the representations have such variation, although the applicant may have made them in good faith, not knowing that they were untrue, if they were made the basis of the contract,

such contract is void. "It is therefore immaterial," the court declared, "whether the warrantor acted in good faith in making them."

The facts of the case were very much like those of the case at bar. The applicant represented himself, in answer to a question, as not having heart disease. Of this representation the court said that it "was certainly a material one, and doubtless the company acted upon it." And further: "It is scarcely conceivable that the company would have issued the policy if the applicant had answered that he was or had been afflicted with heart disease, or even if he had answered doubtfully. We think that if the answer made was untrue, the plaintiff below cannot recover."

The judgment in the case was reversed upon the ground, among others not necessary to be considered, of error in the instruction of the court "that if Wood had heart disease and did not know it, the failure on his part to disclose it could not avoid the policy." There was dispute as to the fact but the court did not pass upon it, remitting it as a question for the jury to decide at the next trial.

In *Southern Life Ins. Co.* v. *Wilkinson*, 53 Georgia, 535, 549, 550, after commenting on the difference the cases make between warranties and representations, the peremptory character of the former, their truth being the only question, the effect of the latter being determined by their materiality to the risk, the court said the Code of the State determined the character of the statements. The court quoted § 2479, which we have given, and § 2480, which provides that "any verbal or written representation of facts by the assured to induce the acceptance of the risk, if material, must be true or the policy is void," and said that "the proper construction is that if there be any variation in them from what is true, whereby the nature or extent or character of the risk is changed, the policy, if it makes them the basis of the contract of insurance,

will be void, and that this will be so whether they are or are not wilfully or fraudulently made.

It is, however, contended by respondent that the questions asked in the application were truthfully answered, or, at any rate, whether they were truthfully answered was a question for the jury. And it is insisted that the answers of Salgue in regard to other insurance and the action thereon by other companies were correct.

But granting that the truthfulness of the answers was a question for the jury, the testimony was conflicting, and, as the verdict was general, it is not possible to say what view the jury took of the conflict, or that it was necessary to resolve it in view of the charge of the court, or how they would have resolved it if instructions requested by the insurance company had been given.

We think there was error also in refusing other requests for instructions. We have seen questions were addressed to Salgue as to the names and residence of the physicians he had employed or consulted, and whether any physician had expressed an unfavorable opinion upon his life with reference to life insurance, and also whether any proposal or application to insure his life was pending in another company or, if made, had not been granted. To the first question he gave the name of only one physician. There was testimony that he had consulted others. To the second question he answered, "No." There was testimony that the answer was untruthful. To the third question he answered, "None." The truthfulness of the answer is asserted notwithstanding it appeared from the testimony that he had made application to the Penn Mutual Company, which application had not been granted. The evidence was that the medical examiner had refused to pass him because he was of opinion that he, Salgue, had heart disease and so reported to the agent of the company. The agent told Salgue if he, Salgue, would pay the doctor's fee to the company he, the agent, would withdraw the

application before it reached the company and that Salgue "could answer in the future that he had never been rejected by any company"; and the agent testified "that it is customary entirely with agents to stop examinations that way."

It is contended by respondent that this testimony shows that Salgue's application to the Penn Mutual was not rejected but was withdrawn; and, besides, whether it was rejected or withdrawn was a question for the jury. We are unable to concur with either contention. The question was a very broad one. It was whether any proposal or application had been made for which insurance had not been granted, and particulars were asked for, "and the names of all such companies, associations or *agents*." Regarding the sense of the question—indeed, if not its letter—the answer was untruthful. The question certainly called for something more than an absolute negative. Its purpose was to ascertain the conduct of Salgue with reference to life insurance in order to judge of him as a risk. If it had been answered according to the facts, the company would have received information of circumstance certainly material for it to consider.

This conclusion is supported, as we have seen, by the cited Georgia cases and is not opposed by *Moulor* v. *American Life Insurance Company*, 111 U. S. 335 or *Phœnix Mutual Life Insurance Co.* v. *Raddin*, 120 U. S. 183. In the *Moulor Case* it was held that the statements made by an applicant would be considered as representations rather than warranties, the policy leaving it in doubt which they were contracted to be, and that they could not be considered either by the company or the applicant as covering diseases which the latter was not conscious of having. It was said that what the company desired of the applicant was the utmost good faith toward it, "and make full, direct, and honest answers to all questions, without evasion or fraud, and without suppression, misrepresentation

or concealment of facts with which the company ought to be made acquainted; and that by so doing, and only by so doing, would he be deemed to have made 'fair and true answers.'"

In *Phœnix Life Insurance Company* v. *Raddin*, there is a clear definition of principles. Answers to questions propounded to an applicant, it was held, will be considered representations unless clearly intended by both parties to be warranties, as to which substantial truth in everything material to the risk is all that is required of the applicant. And it was decided "whether there is other insurance on the same subject, and whether such insurance has been applied for and refused, are material facts, at least when statements regarding them are required by the insurers as part of the basis of the contract. . . . Where an answer of the applicant to a direct question of the insurers purports to be a complete answer to the question, any substantial misstatement or omission in the answer avoids a policy issued on the faith of the application."

The medical examiner, as we have seen, put down the answer "No" to the question asked Salgue as to whether he had heart disease, after being informed by Salgue, that he, Salgue, had been told by physicians that his heart was affected. It appears from the evidence that the other answers of Salgue in his application were written down by the agent of the company; and there is testimony for and against the fact that Salgue informed the agent of the opinion entertained of him by his physicians, and that he also informed the agent of other applications for insurance. It is hence contended that the agent, not Salgue, is responsible for the positive character of the answers and that the insurance company is estopped by this action of the agent and by his knowledge of the actual conditions and circumstances. It is, therefore, further contended that the case comes within the principle of the cases which

establish that where the agent of the company prepares the application or makes representations to the insured as to the character and effect of the statements of the application he will be regarded in so doing as the agent of the company, and not the agent of the insured. Among the cases cited to sustain the principle are the following in this court: *Union Mutual Insurance Co.* v. *Wilkinson*, 13 Wall. 222; *American Life Insurance Co.* v. *Mahone*, 21 Wall. 152; *New Jersey Mutual Life Insurance Co.* v. *Baker*, 94 U. S. 610; *Continental Life Insurance Co.* v. *Chamberlain*, 132 U. S. 304. *German-American Life Association* v. *Farley*, *supra*, is also cited, and, being a Georgia case, its authority is especially urged.

There are, however, later cases which enforce the provisions of a policy, and we have seen that it was agreed in the policy under review "that no statement or declaration made to any agent, examiner or other person, and not contained in" the application, should "be taken or construed as having been made to or brought to the notice or knowledge of" the company, "or as charging it with any liability by reason thereof." And he, Salgue, expressed his understanding to be that the company or one or more of its executive officers, and no other person, could grant insurance or make any agreement binding upon the company.

The competency of applicants for insurance to make such agreements, and that they are binding when made, is decided by *Northern Assurance Co.* v. *Grand View Building Association*, 183 U. S. 308; *Northern Assurance Co.* v. *Grand View Building Association*, 203 U. S. 106; *Penman* v. *St. Paul Fire & Marine Insurance Co.*, 216 U. S. 311.

To the contention that *German-American Life Association* v. *Farley*, is determinative, we answer that the principle which it is cited to support is one of general jurisprudence, and therefore the case is not controlling. *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349.

This case was consolidated by the court, against the objection of the insurance company, with the trial of the case of the same plaintiff against the Prudential Insurance Company. This action of the court was based on § 921 of the Revised Statutes which provides that "causes of a like nature or relative to the same questions" may be consolidated "when it appears reasonable to do so." The action of the court is assigned as error. We doubt if it was reasonable to consolidate the cases. We need not, however, pass definitely on that point, as we direct a new trial on other grounds.

Judgment reversed and cause remanded to the District Court for a new trial.

MR. JUSTICE PITNEY dissents.